Presented By: Rana Jabir Abbas

ENGLISH TRANSLATION WITH ARABIC TEXT

WASA'IL AL-SHIA VOL. 22

SECTION 1

Talaq (Divorce): Preliminaries And Conditions

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HADITH COMPILED BY

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(Downloaded on Nov 1, 2025 from http://wasail-al-shia.net)

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SHIA HERITAGE FOUNDATION

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Section 1

Talaq (Divorce): Preliminaries And Conditions

CHAPTER 1

Dislike Of Divorcing A Compatible Wife And Its Non-Prohibition

[Hadith 27874 to 27881]

Hadith 27874

عن صفوان بن مهران، عن أبي عبدالله (عليه السلام) قال: قال رسول الله (صلى الله عليه وآله): تزوجوا وزوجوا، ألا فمن حظّ امرئ مسلم إنفاق قيمة أيمة، وما من شيء أحب إلى الله عزّ وجلّ من بيت يعمر بالنكاح، وما من شيء أبغض إلى الله عزّ وجلّ من بيت يخرب في الاسلام بالفرقة يعني الطلاق.

From Safwan ibn Mihran, from Abu Abdullah (peace be upon him) who said: The Messenger of Allah (peace be upon him and his family) said: Marry and give in marriage. Indeed, among the good fortune of a Muslim man is spending the price of a female slave, and there is nothing more beloved to Allah the Mighty and Majestic than a house that is built up through marriage, and there is nothing more hateful to Allah the Mighty and Majestic than a house that is ruined in Islam through separation - meaning divorce.

ثمّ قال أبو عبدالله (عليه السلام): إن الله عزّ وجلّ إنما وكد في الطلاق وكرر القول فيه من بغضه الفرقة.

Then Abu Abdullah (peace be upon him) said: Indeed Allah the Mighty and Majestic has only emphasized divorce and repeated the speech regarding it because of His hatred of separation.

Hadith 27875

عن أبي هاشم، عن أبي عبدالله (عليه السلام) قال: إن الله عزّ وجلّ يحب البيت الذي فيه العرس ويبغض البيت الذي فيه الطلاق، وما من شيء أبغض إلى الله عزّ وجلّ من الطلاق.

From Abu Hashim, from Abu Abdullah (peace be upon him) who said: Indeed Allah the Mighty and Majestic loves the house in which there is a wedding and hates the house in which there is divorce, and there is nothing more hateful to Allah the Mighty and Majestic than divorce.

Hadith 27876

عن طلحة بن زيد، عن أبي عبدالله (عليه السلام) قال: سمعت أبي يقول: إن الله عزّ وجلّ يبغض كل مطلاق وذواق.

From Talha ibn Zayd, from Abu Abdullah (peace be upon him) who said: I heard my father say: Indeed Allah, the Mighty and Majestic, hates every frequent divorcer and taster (one who marries and divorces frequently).

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Hadith 27877

وبالإسناد عن أبي عبدالله (عليه السلام) قال: بلغ النبي (صلى الله عليه وآله) أن أبا أيوب يريد أن يطلق امرأته فقال رسول الله (صلى الله عليه واله): إن طلاق ام أيوب لحوب ـ أي: إثمّ ـ.

And with the same chain of narration from Abu Abdullah (peace be upon him) who said: It reached the Prophet (may Allah's peace and blessings be upon him and his family) that Abu Ayyub wanted to divorce his wife, so the Messenger of Allah (may Allah's peace and blessings be upon him and his family) said: Indeed the divorce of Umm Ayyub would be a sin - meaning: a transgression.

Hadith 27878

عن ابن أبي عمير، عن غير واحد، عن أبي عبدالله (عليه السلام) قال: ما من شيء مما أحله الله أبغض إليه من الطلاق وإن الله عزّ وجلّ يبغض المطلاق الذواق.

From Ibn Abi Umayr, from more than one person, from Abu Abdullah (peace be upon him) who said: There is nothing among the things that Allah has made lawful that is more hateful to Him than divorce, and indeed Allah, the Mighty and Majestic, hates the frequent divorcer and taster.

Hadith 27879

عن سعد بن طريف، عن أبي جعفر (عليه السلام) قال: مر رسول الله (صلى الله عليه وآله) برجل فقال: ما فعلت امرأتك؟ قال: طلقتها يا رسول الله، قال: من غير سوء؟ قال: من غير سوء

From Sa'd ibn Tarif, from Abu Ja'far (peace be upon him) who said: The Messenger of Allah (peace be upon him and his family) passed by a man and said: What did you do with your wife? He said: I divorced her, O Messenger of Allah. He said: Without any wrongdoing? He said: Without any wrongdoing.

قال: ثمّ إن الرجل تزوج فمر به النبي (صلى الله عليه وآله) فقال: تزوجت؟ فقال: نعم، ثمّ مر به، فقال: ما فعلت امرأتك؟ قال: طلقتها، قال: من غير سوء؟ قال: من غير سوء.

He said: Then the man married, and the Prophet (peace be upon him and his family) passed by him and said: Did you marry? He said: Yes. Then he passed by him again and said: What did you do with your wife? He said: I divorced her. He said: Without any wrongdoing? He said: Without any wrongdoing.

فقال رسول الله (صلى الله عليه وآله): إن الله عزّ وجلّ يبغض ـ أو يلعن ـ كل ذواق من الرجال وكل ذواقة من النساء.

So the Messenger of Allah (peace be upon him and his family) said: Indeed Allah the Mighty and Majestic hates - or curses - every man who tastes and every woman who tastes (marriage and divorce frequently).

Hadith 27880

الحسن بن الفضل الطبرسي في (مكارم الاخلاق) قال: قال (عليه السلام): تزوجوا ولا تطلقوا فإن الطلاق يهتز منه العرش.

Al-Hasan ibn al-Fadl al-Tabarsi in Makarim al-Akhlaq said: He (peace be upon him) said: Marry

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and do not divorce, for indeed divorce causes the Throne to shake.

Hadith 27881

قال: وقال (عليه السلام): تزوجوا ولا تطلقوا فإن الله لا يحب الذواقين والذواقات.

He said: And he (peace be upon him) said: Marry but do not divorce, for Allah does not love men who taste and women who taste (marriage and divorce frequently).

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CHAPTER 2

Permissibility Of Rejecting A Divorced Man When He Proposes Marriage Even If He Is A Suitable Match Of The Highest Nobility

[Hadith 27882 to 27883]

Hadith 27882

عن عبدالله بن سنان، عن أبي عبدالله (عليه السلام) قال: أتى رجل أمير المؤمنين (عليه السلام) فقال له: جئتك مستشيرا، إنّ الحسن والحسين وعبدالله بن جعفر خطبوا إليّ، فقال أمير المؤمنين (عليه السلام): المستشار مؤتمن، أما الحسن، فإنه مطلاق للنساء، ولكن زوجها الحسين فانه خير لابنتك.

From Abdullah ibn Sinan, from Abu Abdullah (peace be upon him) who said: A man came to Amir al-Muminin (peace be upon him) and said to him: I have come to you seeking counsel. Indeed, al-Hasan, al-Husayn, and Abdullah ibn Ja'far have proposed to me (for my daughter's hand in marriage). So Amir al-Muminin (peace be upon him) said: The one whose counsel is sought is entrusted. As for al-Hasan, he is one who divorces women frequently, but marry her to al-Husayn, for he is better for your daughter.

Hadith 27883

عن يحيى بن أبي العلاء، عن أبي عبدالله (عليه السلام) قال: إن الحسن بن علي (عليه السلام) طلق خمسين امرأة فقام علي (عليه السلام) بالكوفة فقال: يا معشر أهل الكوفة لا تنكحوا الحسن فانه رجل مطلاق، فقام اليه رجل فقال: بلى والله لننكحنه فانه ابن رسول الله (صلى الله عليه وآله) وابن فاطمة فإن أعجبه أمسك وإن كره طلق.

From Yahya ibn Abi al-Ala, from Abu Abdullah (peace be upon him) who said: Indeed al-Hasan ibn Ali (peace be upon him) divorced fifty women. So Ali (peace be upon him) stood up in Kufa and said: O people of Kufa, do not give your daughters in marriage to al-Hasan, for he is a man who divorces frequently. Then a man stood up to him and said: Yes, by Allah, we will certainly marry him (our daughters to him), for he is the son of the Messenger of Allah (peace and blessings be upon him and his family) and the son of Fatimah. If she pleases him, he will keep her, and if he dislikes her, he will divorce her.

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CHAPTER 3

Permissibility Of Divorcing A Wife Who Is Not Compatible

[Hadith 27884 to 27888]

Hadith 27884

عن عثمّان ابن عيسى، عن رجل، عن أبي جعفر (عليه السلام) انه كانت عنده امرأة تعجبه وكان لها محبا فأصبح يوما وقد طلقها واغتم لذلك، فقال له بعض مواليه: لم طلقتها؟ فقال إني ذكرت عليا (عليه السلام) فتنقصته فكرهت أن الصق جمرة من جمر جهنم بجلدي.

From Uthman ibn Isa, from a man, from Abu Ja'far (peace be upon him): He had a wife whom he found pleasing and he loved her. One day he woke up having divorced her and was distressed about it. One of his followers said to him: Why did you divorce her? He replied: I mentioned Ali (peace be upon him) and she spoke disparagingly (ill) of him, so I disliked having a burning coal from the coals of Hell stick to my skin.

Hadith 27885

عن خطاب بن مسلمة قال: كانت عندي امرأة تصف هذا الامر وكان أبوها كذلك وكانت سيئة الخلق وكنت أكره طلاقها لمعرفتي بايمانها وإيمان أبيها، فلقيت أبا الحسن موسى (عليه السلام) وأنا اريد أن أسأله عن طلاقها ـ إلى أن قال: ـ

From Khattab ibn Maslama who said: I had a wife who followed this amr (wilayah) and her father was likewise, but she had bad character. I disliked divorcing her because I knew of her faith and her father's faith. I met Abu al-Hasan Musa (peace be upon him) while I intended to ask him about divorcing her - until he said -

فابتدأني فقال: كان أبي زوجني ابنة عم لي وكانت سيئة الخلق، وكان أبي ربما أغلق علي وعليها الباب رجاء أن ألقاها فأتسلق الحائط وأهرب منها، فلما مات أبي طلقتها فقلت: الله أكبر أجابني والله عن حاجتي من غير مسألة.

Then he (the Imam) began speaking to me and said: My father married me to a cousin of mine and she had bad character. My father would sometimes lock the door on me and her, hoping that I would meet with her, but I would climb over the wall and flee from her. When my father died, I divorced her. I said: God is Most Great! By God, he answered my need without me even asking.

Hadith 27886

عن خطاب بن مسلمة قال: دخلت عليه ـ يعني أبا الحسن (عليه السلام) ـ وأنا اريد أن أشكو إليه ما ألقى من امرأتي من سوء خلقها، فابتدأني فقال إن أبي زوجني مرة امرأة سيئة الخلق فشكوت ذلك اليه فقال: ما يمنعك من فراقها؟ قد جعل الله ذلك إليك، فقلت فيما بيني وبين نفسي: قد فرجت عني.

From Khattab ibn Maslama, he said: I entered upon him - meaning Abu al-Hasan (peace be upon him) - and I intended to complain to him about what I was suffering from my wife's bad character. He began by saying to me: My father once married me to a woman of bad character, so I

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complained about that to him. He said: What prevents you from separating from her? Allah has made that matter in your hands. So I said to myself: He has relieved me of this burden.

Hadith 27887

عن الوليد بن صبيح، عن أبي عبدالله (عليه السلام) قال: سمعته يقول: ثلاث ترد عليهم دعوتهم أحدهم رجل يدعو على امرأته وهو لها ظالم فيقال له: ألم يجعل أمرها بيدك.

From al-Walid ibn Sabih, from Abu Abdullah (peace be upon him), he said: I heard him say: Three categories of people have their supplications rejected - one of them is a man who supplicates against his wife while he is unjust to her, so it is said to him: Did He not place her matter in your hands?

Hadith 27888

عن محمّد بن حماد الحارثي، عن أبي عبدالله (عليه السلام) قال: قال رسول الله (صلى الله عليه وآله): خمس لا يستجاب لهم:

From Muhammad ibn Hammad al-Harithi, from Abu Abdullah (peace be upon him), he said: The Messenger of Allah (peace be upon him and his family) said: Five categories are not answered in their supplications:

رجل جعل بيده طلاق امرأته وهي تؤذيه وعنده ما يعطيها ولم يخل سبيلها، ورجل أبق مملوكه ثلاث مرات ولم يبعه، ورجل مر بحائط مائل وهو يقبل إليه ولم يسرع المشي حتى سقط عليه، ورجل أقرض رجلا مالا فلم يشهد عليه، ورجل جلس في بيته وقال: اللهم ارزقني ولم يطلب.

A man who has the power of divorce over his wife in his hands while she harms him and he has the means to provide for her but does not free her way; a man whose slave has fled three times and he did not sell him; a man who passed by a leaning wall that was falling toward him and did not hasten his walking until it fell upon him; a man who lent money to someone without taking witnesses; and a man who sat in his house and said "O Allah, provide for me" without seeking provision.

أقول: وتقدم ما يدل على ذلك هنا وفي المهور في أحاديث متعة المطلقة وفي أحاديث تزويج الناصبية وفي أحاديث الدعاء وغير ذلك، ويأتي ما يدل عليه.

I (Hurr Amili) say: What has preceded indicates this here and in the section on dowers in the hadiths of the divorced woman's temporary marriage, and in the hadiths of marrying Nasibi women, and in the hadiths of supplication and other topics, and what indicates this will come.

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CHAPTER 4

Permissibility Of Multiple Divorces And Their Repetition By A Man To One Woman And To Various Women

[Hadith 27889 to 27890]

Hadith 27889

عن عبدالله بن سنان، عن أبي عبدالله (عليه السلام) قال: إن عليا (عليه السلام) قال وهو على المنبر: لا تزوجوا الحسن فانه رجل مطلاق، فقام رجل من همدان فقال: بلى والله لنزوجنه وهو ابن رسول الله (صلى الله عليه وآله) وابن أمير المؤمنين (عليه السلام)، فإن شاء أمسك وإن شاء طلق.

From Abdullah ibn Sinan, from Abu Abdullah (peace be upon him) who said: Ali (peace be upon him) said while he was upon the pulpit: Do not marry al-Hasan, for he is a man who divorces frequently. Then a man from Hamdan stood up and said: Yes, by Allah, we will marry him, for he is the son of the Messenger of Allah (peace and blessings be upon him and his family) and the son of Amir al-Muminin (peace be upon him). If he wishes, he may keep (his wife), and if he wishes, he may divorce (her).

Hadith 27890

وقد تقدم حديث يحيى بن أبى العلاء، عن أبي عبدالله (عليه السلام) قال: إن الحسن بن علي (عليه السلام) طلق خمسين امرأة، ثمّ ذكر نحوه.

The hadith of Yahya ibn Abi al-Ala has already been mentioned, from Abu Abdullah (peace be upon him) who said: Al-Hasan ibn Ali (peace be upon him) divorced fifty women, then he mentioned something similar to this.

أقول: وتقدم ما يدل على ذلك هنا وفي المهور، ويأتي ما يدل عليه في الطلاق ثلاثا وتسعا وغير ذلك.

I (Hurr Amili) say: What indicates this has already been mentioned here and in (the section on) dowers, and what indicates it will come in (the sections on) divorcing thrice and nine times and other than that.

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CHAPTER 5

Dislike Of Refraining From Divorcing A Wife Who Harms Her Husband

[Hadith 27891 to 27891]

Hadith 27891

قد تقدم في حديث محمّد بن حماد الحارثي، عن أبي عبدالله (عليه السلام) قال: قال رسول الله (صلى الله عليه وآله):

خمسة لا يستجاب لهم: رجل جعل الله بيده طلاق امرأته فهي تؤذيه وعنده ما يعطيها ولم يخل سبيلها.

It has already been mentioned in the hadith of Muhammad ibn Hammad al-Harithi, from Abu Abdullah (peace be upon him) who said: The Messenger of Allah (peace be upon him and his family) said: Five people will not have their supplications answered: A man to whom Allah has given the power to divorce his wife, yet she harms him and he has the means to give her (her due rights), but he does not free her way.

أقول: وتقدم ما يدل على ذلك في الدعاء.

I (Hurr Amili) say: What indicates this has already been mentioned in the chapter on supplication.

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CHAPTER 6

Obligation Of The Ruler To Discipline People And Compel Them With The Whip And Sword To Conform Divorce To The Sunnah And Abandon What Contradicts It

[Hadith 27892 to 27896]

Hadith 27892

عن أبي بصير، قال: سمعت أبا جعفر (عليه السلام) يقول: والله لو ملكت من أمر الناس شيئا لاقمتهم بالسيف والسوط حتى يطلقوا للعدة كما أمر الله عزّ وجلّ.

From Abu Basir, he said: I heard Abu Ja'far (peace be upon him) say: By Allah, if I had authority over any matter concerning the people, I would make them stand upright with the sword and whip until they divorce according to the waiting period as Allah the Mighty and Glorious commanded.

Hadith 27893

عن معمر بن وشيكة قال: سمعت أبا جعفر (عليه السلام) يقول: لا يصلح الناس في الطلاق إلا بالسيف، ولو وليتهم لرددتهم فيه إلى كتاب الله عزّ وجلّ.

From Mu'ammar ibn Washikah, he said: I heard Abu Ja'far (peace be upon him) say: People will not be set right regarding divorce except by the sword, and if I had authority over them, I would return them in it to the Book of Allah the Mighty and Glorious.

Hadith 27894

عن أبي بصير عن أبي جعفر (عليه السلام) قال: لو وليت الناس لعلمتهم كيف ينبغي لهم أن يطلقوا، ثمّ لم اوت برجل قد خالف إلا أوجعت ظهره، ومن طلق على غير السنة رد إلى كتاب الله وإن رغم أنفه.

From Abu Basir, from Abu Ja'far (peace be upon him) who said: If I were to rule over the people, I would teach them how they should divorce, then I would not be brought anyone who violated [the proper procedure] except that I would cause his back to ache [from punishment]. And whoever divorces contrary to the Sunnah is returned to the Book of Allah, even if his nose is rubbed in the dust.

Hadith 27895

عن معمر بن وشيكة قال: سمعت أبا جعفر (عليه السلام) يقول: لا يصلح الناس في الطلاق إلا بالسيف ولو وليتم لرددتهم إلى كتاب الله عزّ وجلّ.

From Mu'ammar ibn Washika who said: I heard Abu Ja'far (peace be upon him) saying: The people will not be set right regarding divorce except by the sword, and if you were to rule over them, you would return them to the Book of Allah, the Mighty and Majestic.

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Hadith 27896

عن ابن أبي نصر عن أبي عبدالله (عليه السلام) قال: لو وليت أمر الناس لعلمتهم الطلاق ثمّ لم اوت بأحد خالف إلا أوجعته ضربا.

From Ibn Abi Nasr, from Abu Abdullah (peace be upon him) who said: If I were to rule over the affairs of the people, I would teach them divorce, then I would not be brought anyone who violated [the proper procedure] except that I would cause him pain through beating.

أقول: وتقدم ما يدل على ذلك، في الامر بالمعروف، ويأتي ما يدل عليه.

I (Hurr Amili) say: What indicates this has already been mentioned in [the chapter on] commanding good, and what indicates it will come [later].

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CHAPTER 7

Invalidity Of Divorce That Does Not Meet The Legal Religious Conditions

[Hadith 27897 to 27909]

Hadith 27897

عن عمرو بن رباح، عن أبي جعفر (عليه السلام) قال: قلت له: بلغني أنك تقول: من طلق لغير السنة أنك لا ترى طلاقه شيئا. فقال أبو جعفر (عليه السلام): ما أقوله، بل الله يقوله، والله لو كنا نفتيكم بالجور لكنا شرا منكم، لان الله يقول: (لولا ينهاهم الربانيون والاحبار عن قولهم الاثمّ وأكلهم السحت) إلى آخر الآية.

From Amr ibn Rabah, from Abu Ja'far (peace be upon him) who said: I said to him: It has reached me that you say regarding one who divorces contrary to the Sunnah that you do not consider his divorce to be anything. Abu Ja'far (peace be upon him) said: I do not say it, rather Allah says it. By Allah, if we were to give you rulings based on injustice, we would be worse than you, because Allah says: "Why do the rabbis and the scholars not forbid them from their sinful speech and their consuming of what is unlawful" [Quran, 5:63] to the end of the verse.

Hadith 27898

عن عبدالله بن سليمان عن أبي جعفر (عليه السلام) قال: كل شيء خالف كتاب الله عزّ وجلّ رد إلى كتاب الله والسنة.

From Abdullah ibn Sulayman, from Abu Ja'far (peace be upon him) who said: Everything that contradicts the Book of Allah, the Mighty and Majestic, is to be referred back to the Book of Allah and the Sunnah.

Hadith 27899

عن الحلبي، عن أبي عبدالله (عليه السلام) في حديث قال: الطلاق لغير السنة باطل.

From al-Halabi, from Abu Abdullah (peace be upon him) in a hadith he said: Divorce that is not according to the Sunnah is invalid.

أقول: المراد بالسنة المعنى الاعم أي الموافق للشرع أعم من طلاق السنة والعدة وغيرهما.

I (Hurr Amili) say: What is meant by Sunnah here is the broader meaning, that is, in accordance with the Sharia, encompassing divorce according to the Sunnah, divorce during the waiting period, and other types.

Hadith 27900

عن محمّد الحلبي، عن أبي عبدالله (عليه السلام) في حديث قال: الطلاق على غير السنة باطل.

From Muhammad al-Halabi, from Abu Abdullah (peace be upon him) in a hadith he said: Divorce that is not according to the Sunnah is invalid.

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Hadith 27901

عن أبي بصير، عن أبي جعفر (عليه السلام) قال: من طلق لغير السنة رد إلى الكتاب كتاب وإن رغم أنفه.

From Abu Basir, from Abu Ja'far (peace be upon him) who said: Whoever divorces not according to the Sunnah will be returned to the Book, even if he dislikes it.

Hadith 27902

عن عبدالله بن سنان، عن أبي عبدالله (عليه السلام) قال: سألته عن الطلاق إذا لم يطلق للعدة فقال: يرد إلى كتاب الله عزّ وجلّ.

From Abdullah ibn Sinan, from Abu Abdullah (peace be upon him), he said: I asked him about divorce when it is not done according to the waiting period (iddah), so he said: It is referred back to the Book of Allah, the Mighty and Exalted.

أقول: الظاهر أن المراد بالعدة هنا عدة الطهر بمعنى انقضاء الحيض ودخولها في طهر لم يجامعها فيه، وهو مستعمل بهذا المعنى كما يأتي.

I (Hurr Amili) say: The apparent meaning is that what is intended by "iddah" here is the waiting period of purity, meaning the end of menstruation and her entering into a state of purity in which he has not had intercourse with her, and it is used in this sense as will come.

Hadith 27903

عن محمّد بن مسلم عن أبي جعفر (عليه السلام) في حديث قال: إنما الطلاق الذي أمر الله عزّ وجلّ به، فمن خالف لم يكن له طلاق.

From Muhammad ibn Muslim, from Abu Jafar (peace be upon him) in a narration, he said: Indeed, the divorce is that which Allah, the Mighty and Exalted, has commanded. So whoever contradicts it, there is no divorce for him.

Hadith 27904

عن الحلبي، عن أبي عبدالله (عليه السلام) في حديث قال: كل شيء خالف كتاب الله فهو رد إلى كتاب الله عزّ وجلّ، وقال: لا طلاق إلا في عدة.

From al-Halabi, from Abu Abdullah (peace be upon him) in a narration, he said: Everything that contradicts the Book of Allah is referred back to the Book of Allah, the Mighty and Exalted. And he said: There is no divorce except during the waiting period (iddah).

Hadith 27905

عن أبي بصير، عن أبي جعفر (عليه السلام) قال: سألته عن امرأة طلقها زوجها لغير السنة وقلنا: انهم أهل بيت ولم يعلم بهم أحد، فقال: ليس بشيء.

From Abu Basir, from Abu Ja'far (peace be upon him) who said: I asked him about a woman whose husband divorced her contrary to the Sunnah, and we said: They are a household and no one knew

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about them. He said: It is nothing.

Hadith 27906

عن إسماعيل بن الفضل الهاشمي قال: قال أبو عبدالله (عليه السلام): لا يقع الطلاق إلا على كتاب الله والسنة لانه حد من حدود الله عزّ وجلّ.

From Isma'il ibn al-Fadl al-Hashimi who said: Abu Abdullah (peace be upon him) said: Divorce does not occur except according to the Book of Allah and the Sunnah, because it is one of the bounds of Allah, the Mighty and Glorious.

يقول: (إذا طلّقتم النساء فطلقوهن لعدتهن وأحصوا العدة) ويقول: (وأشهدوا ذوي عدل منكم) ويقول: (تلك حدود الله ومن يتعد حدود الله فقد ظلم نفسه) وأن رسول الله (صلى الله عليه وآله) رد طلاق عبدالله بن عمر لانه كان على خلاف الكتاب والسنة.

He (Allah) says: "When you divorce women, divorce them for their prescribed periods and count the prescribed periods" [Quran, 65:1] and He says: "And take for witness two persons from among you, endued with justice" [Quran, 65:2] and He says: "These are the bounds of Allah, and whoever transgresses the bounds of Allah, he indeed wrongs his soul" [Quran, 65:1]. And the Messenger of Allah (peace be upon him and his family) rejected the divorce of Abdullah ibn Umar because it was contrary to the Book and the Sunnah.

Hadith 27907

عن الفضل بن شاذان، عن الرضا (عليه السلام) في كتابه إلى المأمون قال: والطلاق للسنة على ما ذكره الله في كتابه وسنة رسوله (صلى الله عليه وآله)، ولا يكون الطلاق لغير السنة، وكل طلاق يخالف الكتاب والسنة فليس بطلاق، كما أن كل نكاح يخالف الكتاب فليس بنكاح.

From al-Fadl ibn Shadhan, from al-Rida (peace be upon him) in his letter to al-Ma'mun, he said: And divorce is according to the Sunnah as Allah mentioned in His Book and the Sunnah of His Messenger (peace be upon him and his family), and there is no divorce contrary to the Sunnah. Every divorce that contradicts the Book and the Sunnah is not a divorce, just as every marriage that contradicts the Book is not a marriage.

Hadith 27908

علي بن جعفر في كتابه، عن أخيه موسى (عليه السلام) قال: سألته عن الرجل يطلق امرأته في غير عدة، فقال: إن ابن عمر طلق امرأته على عهد رسول الله (صلى الله عليه وآله) وهي حائض فأمره رسول الله (صلى الله عليه وآله) أن يراجعها ولم يحسب تلك التطليقة.

Ali ibn Ja'far in his book, from his brother Musa (peace be upon him) said: I asked him about a man who divorces his wife not during the waiting period. He said: Indeed, Ibn Umar divorced his wife during the time of the Messenger of Allah (peace be upon him and his family) while she was menstruating, so the Messenger of Allah (peace be upon him and his family) commanded him to take her back and did not count that divorce.

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Hadith 27909

عن أحمد بن محمّد بن أبي نصر، عن الرضا (عليه السلام) قال: سألته عن رجل طلق امرأته بعد ماغشيها بشاهدين عدلين، قال: ليس هذا طلاقا.

From Ahmad ibn Muhammad ibn Abi Nasr, from al-Rida (peace be upon him) said: I asked him about a man who divorced his wife after having intercourse with her in the presence of two just witnesses. He said: This is not a divorce.

فقلت له: فكيف طلاق السنّة؟ فقال: يطلقها إذا طهرت من حيضها قبل أن يغشيها بشاهدين عدلين، فإن خالف ذلك رد إلى كتاب الله عزّ وجلّ.

I said to him: Then how is the divorce according to the Sunnah? He said: He divorces her when she becomes pure from her menstruation before he has intercourse with her, in the presence of two just witnesses. If he violates that, he is referred back to the Book of Allah, the Mighty and Glorious.

قلت: فإنه طلق على طهر من غير جماع بشهادة رجل وامرأتين، قال: لا تجوز شهادة النساء في الطلاق.

I said: What if he divorced during a state of purity without intercourse with the testimony of one man and two women? He said: The testimony of women is not valid in divorce.

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CHAPTER 8

The Condition Of Validity Of Divorce Requiring The Purity Of The Divorced Woman If She Is Not Pregnant And Has Been Consummated With And Her Husband Is Present, And The Nullity Of Divorce During Menstruation And Postnatal Bleeding At Such Time

[Hadith 27910 to 27919]

Hadith 27910

عن سعيد الاعرج قال: سمعت أبا عبدالله (عليه السلام) يقول: طلق ابن عمر امرأته ثلاثا وهي حائض، فسأل عمر رسول الله (صلى الله عليه وآله) فأمره أن يراجعها.

From Sa'id al-A'raj who said: I heard Abu Abdullah (peace be upon him) say: Ibn Umar divorced his wife three times while she was menstruating, so Umar asked the Messenger of Allah (peace be upon him and his family), and he commanded him to take her back.

فقلت: إنّ الناس يقولون: إنما طلقها واحدة وهي حائض، قال: فلاي شيء سأل رسول الله (صلى الله عليه وآله) إذا؟ إن كان هو أملك برجعتها كذبوا ولكن طلقها ثلاثا فأمره رسول الله (صلى الله عليه وآله) أن يراجعها، ثمّ قال: إن شئت فطلّق، وإن شئت فأمسك.

I said: Indeed, people say that he only divorced her once while she was menstruating. He said: Then for what reason did he ask the Messenger of Allah (peace be upon him and his family)? If he had more right to take her back, they lied. Rather, he divorced her three times, so the Messenger of Allah (peace be upon him and his family) commanded him to take her back. Then he said: If you wish, divorce her, and if you wish, keep her.

Hadith 27911

عن الحلبيّ، قال: سألت أبا عبدالله (عليه السلام) عن رجل طلق امرأته وهي حائض؟ فقال: الطلاق لغير السنة باطل.

From al-Halabi who said: I asked Abu Abdullah (peace be upon him) about a man who divorced his wife while she was menstruating. He said: Divorce contrary to the Sunnah is invalid.

Hadith 27912

عن محمّد الحلبي قال: قلت لابي عبدالله (عليه السلام): الرجل يطلق امرأته، وهي حائض، قال: الطلاق على غير السنة باطل، قلت: فالرجل يطلق ثلاثا في مقعد، قال: يرد إلى السنة.

From Muhammad al-Halabi who said: I said to Abu Abdullah (peace be upon him): A man divorces his wife while she is menstruating. He said: Divorce that is not according to the Sunnah is invalid. I said: What about a man who divorces three times in one sitting? He said: It should be returned to the Sunnah.

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Hadith 27913

عن أبي أيوب عن محمّد بن مسلم، قال: قال أبو جعفر (عليه السلام): من طلق ثلاثا في مجلس على غير طهر لم يكن شيئاً، إنّما الطلاق الذي أمر الله عزّ وجلّ به فمن خالف لم يكن له طلاق وإن ابن عمر طلق امرأته ثلاثا في مجلس. وهي حائض، فأمره رسول الله (صلى الله عليه وآله) أن ينكحها، ولا يعتد بالطلاق.

From Abu Ayyub from Muhammad ibn Muslim who said: Abu Ja'far (peace be upon him) said: Whoever divorces three times in one session while not in a state of purity, it is nothing. Indeed, divorce is only that which Allah the Mighty and Glorious has commanded. Whoever opposes this has no divorce. Indeed, Ibn Umar divorced his wife three times in one session while she was menstruating, so the Messenger of Allah (peace be upon him and his family) ordered him to take her back in marriage and not to count the divorce.

Hadith 27914

عن معمر بن يحيى عن أبي جعفر، وأبي عبدالله (عليهما السلام) أنهما قالا: اذا طلق الرجل في دم النفاس، أو طلّقها بعد ما يمسها فليس طلاقه إياها بطلاق.

From Mu'ammar ibn Yahya from Abu Ja'far and Abu Abdullah (peace be upon both of them) that they said: When a man divorces during the blood of postpartum bleeding, or divorces her after he has touched her, his divorce of her is not a divorce.

Hadith 27915

عن إسحاق بن عمار، عن أبي إبراهيم (عليه السلام) قال: سألته عن رجل يطلق امرأته في طهر من غير جماع، ثمّ يراجعها من يومه، ثمّ يطلّقها، تبين منه بثلاث تطليقات في طهر واحد؟ فقال: خالف السنة. قلت: فليس ينبغي له إذا راجعها أن يطلقها إلا في طهر آخر؟ قال: نعم، قلت: حتى يجامع؟ قال: نعم.

From Ishaq ibn Ammar, from Abu Ibrahim (peace be upon him), he said: I asked him about a man who divorces his wife during a period of purity without having intercourse, then takes her back on the same day, then divorces her again - does she become separated from him by three divorces in one period of purity? He said: He has opposed the Sunnah. I said: So it is not proper for him, when he takes her back, to divorce her except in another period of purity? He said: Yes. I said: Until he has intercourse? He said: Yes.

Hadith 27916

عن الحلبي، عن أبي عبدالله (عليه السلام)، قال: من طلق امرأته ثلاثا في مجلس، وهي حائض، فليس بشيء، وقد رد رسول الله (صلى الله عليه وآله) طلاق عبدالله بن عمر إذ طلق امرأته ثلاثاً، وهي حائض، فأبطل رسول الله (صلى الله عليه وآله) ذلك الطلاق، وقال: كل شيء خالف كتاب الله فهو رد إلى كتاب الله عزّ وجلّ، وقال: لا طلاق إلا في عدة.

From al-Halabi, from Abu Abdullah (peace be upon him), he said: Whoever divorces his wife three times in one sitting while she is menstruating, it is nothing. The Messenger of Allah (peace be upon him and his family) rejected the divorce of Abdullah ibn Umar when he divorced his wife three times while she was menstruating, so the Messenger of Allah (peace be upon him and his

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family) nullified that divorce and said: Everything that contradicts the Book of Allah is rejected in favor of the Book of Allah, the Mighty and Glorious. And he said: There is no divorce except during the waiting period.

Hadith 27917

عن سعيد الاعرج، قال: قلت لابي عبدالله (عليه السلام): إني سألت عمرو بن عبيد عن طلاق ابن عمر، فقال: طلقها وهي طامث واحدة، فقال أبو عبدالله (عليه السلام): أفلا قلتم له: إذا طلقها واحدة طامثاً، أو غير طامث فهو أملك برجعتها؟ فقلت: قد قلت له ذلك، فقال أبو عبدالله (عليه السلام): كذب عليه لعنة الله بل طلقها ثلاثاً، فردّها النبي (صلى الله عليه وآله)، فقال: أمسك أو طلق على السنة إن أردت الطلاق.

From Sa'id al-A'raj, he said: I said to Abu Abdullah (peace be upon him): I asked Amr ibn Ubayd about the divorce of Ibn Umar, and he said: He divorced her once while she was menstruating. Abu Abdullah (peace be upon him) said: Why did you not say to him: If he divorced her once while menstruating or not menstruating, he still has the right to take her back? I said: I did say that to him. Abu Abdullah (peace be upon him) said: He lied - may Allah's curse be upon him. Rather, he divorced her three times, but the Prophet (peace be upon him and his family) returned her to him and said: Either keep her or divorce her according to the Sunnah if you want divorce.

Hadith 27918

عن بكير بن أعين وغيره، عن أبي جعفر (عليه السلام)، قال: كل طلاق لغير العدة فليس بطلاق، أن يطلقها وهي حائض أو في دم نفاسها أو بعد ما يغشاها قبل أن تحيض فليس طلاقه بطلاق.

From Bukayr ibn A'yan and others, from Abu Ja'far (peace be upon him), he said: Every divorce that is not in accordance with the waiting period is not a divorce - that he divorces her while she is menstruating, or in the blood of postpartum bleeding, or after he has had relations with her before she menstruates, then his divorce is not a divorce.

Hadith 27919

عن زرارة، عن أبي جعفر (عليه السلام) ـ في حديث ـ أنّه قال لنافع مولى ابن عمر: أنت الذي تزعم أن ابن عمر طلق امرأته واحدة، وهي حائض فأمر رسول الله (صلى الله عليه وآله) عمر أن يأمره أن يراجعها؟ فقال: نعم،

From Zurarah, from Abu Ja'far (peace be upon him) - in a hadith - that he said to Nafi, the freed slave of Ibn Umar: Are you the one who claims that Ibn Umar divorced his wife once while she was menstruating, and the Messenger of Allah (peace be upon him and his family) ordered Umar to command him to take her back? He said: Yes.

فقال له: كذبت ـ والله الذي لا إله إلا هو ـ على ابن عمر أنا أما سمعت ابن عمر يقول طلقتها على عهد رسول الله (صلى الله عليه وآله) ثلاثا فردها رسول الله (صلى الله عليه وآله) عليّ، وأمسكتها بعد الطلاق، فاتق الله يا نافع ! ولا ترو على ابن عمر الباطل.

So he (the Imam) said to him: You have lied - by Allah, there is no god but Him - against Ibn Umar. Did you not hear Ibn Umar say: I divorced her during the time of the Messenger of Allah (peace be

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upon him and his family) three times, so the Messenger of Allah (peace be upon him and his family) returned her to me, and I kept her after the divorce. So fear Allah, O Nafi, and do not narrate falsehood about Ibn Umar.

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CHAPTER 9

The Condition That Divorce Be Valid Only When The Divorced Woman Is In A State Of Purity In Which He Has Not Had Intercourse With Her, Otherwise The Divorce Is Invalid

[Hadith 27920 to 27926]

Hadith 27920

عن معمر بن يحيى، عن أبي جعفر، وأبي عبدالله (عليهما السلام)، أنّهما قالا: إذا طلق الرجل في دم النفاس، أو طلقها بعد ما يمسها فليس طلاقه إياها بطلاق.

From Mu'ammar ibn Yahya, from Abu Ja'far and Abu Abdullah (peace be upon them both), that they both said: If a man divorces during the blood of postpartum bleeding, or divorces her after he has touched her, then his divorce of her is not a divorce.

Hadith 27921

عن أحمد بن محمّد قال: سألت أبا الحسن (عليه السلام) عن رجل طلق امرأته بعد ما غشيها بشهادة عدلين قال: ليس هذا طلاقا.

From Ahmad ibn Muhammad who said: I asked Abu al-Hasan (peace be upon him) about a man who divorced his wife after he had intercourse with her in the presence of two just witnesses. He said: This is not a divorce.

Hadith 27922

عن اليسع قال: سمعت أبا جعفر (عليه السلام) يقول: لا طلاق إلا على السنة ولا طلاق إلا على طهر من غير جماع.

From al-Yasa who said: I heard Abu Ja'far (peace be upon him) saying: There is no divorce except according to the Sunnah, and there is no divorce except during a state of purity without sexual intercourse.

Hadith 27923

عن زرارة، عن أبي جعفر (عليه السلام) في حديث قال: أما طلاق السنة فإذا أراد الرجل أن يطلق امرأته فلينتظر بها حتى تطمث وتطهر فإذا خرجت من طمثها طلقها تطليقة من غير جماع ويشهد شاهدين، ثمّ ذكر في طلاق العدة مثل ذلك.

From Zurarah, from Abu Ja'far (peace be upon him) in a hadith where he said: As for divorce according to the Sunnah, when a man intends to divorce his wife, let him wait for her until she menstruates and becomes pure. When she emerges from her menstruation, let him divorce her once without having had sexual intercourse, and let him have two witnesses testify. Then he mentioned regarding divorce during the waiting period ('iddah) something similar to this.

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Hadith 27924

عن بكير بن أعين، عن أبي جعفر (عليه السلام)، قال: الطلاق أن يطلق الرجل المرأة على طهر من غير جماع، ويشهد رجلين عدلين على تطليقه ثمّ هو أحق برجعتها ما لم تمض ثلاثة قروء، فهذا الطلاق الذي أمر الله به في القرآن، وأمر به رسول الله (صلى الله عليه وآله) في سنته، وكل طلاق لغير العدة فليس بطلاق.

From Bukayr ibn A'yan, from Abu Ja'far (peace be upon him), who said: Divorce is that a man divorces a woman during a state of purity without sexual intercourse, and has two just men witness his divorce. Then he has more right to take her back as long as three menstrual cycles have not passed. This is the divorce that Allah commanded in the Quran, and that the Messenger of Allah (peace be upon him and his family) commanded in his Sunnah. Every divorce that is not according to the waiting period ('iddah) is not a valid divorce.

Hadith 27925

وعن حريز، قال: سألت أبا عبدالله (عليه السلام) عن طلاق السنة، فقال: على طهر من غير جماع بشاهدي عدل، ولا يجوز الطلاق إلا بشاهدين والعدّة، وهو قوله: (فطلقوهن لعدتهن وأحصوا العدة) الآية.

From Hariz, he said: I asked Abu Abdullah (peace be upon him) about divorce according to the Sunnah, so he said: During a state of purity without sexual intercourse, with two just witnesses, and divorce is not permissible except with two witnesses and the waiting period (iddah), and this is His saying: "So divorce them for their waiting period and count the waiting period" [Quran, 65:1] - the verse.

Hadith 27926

عن أبي الجارود، عن أبي جعفر (عليه السلام) في قوله: (فطلقوهن لعدتهن): والعدة الطهر من الحيض، (وأحصوا العدة).

From Abu al-Jarud, from Abu Ja'far (peace be upon him) regarding His saying: "So divorce them for their waiting period" [Quran, 65:1]: The waiting period (iddah) is the state of purity from menstruation, and count the waiting period.

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CHAPTER 10

The Condition That Divorce Is Valid Only With The Testimony Of Two Just Witnesses, Otherwise It Is Void, And That The Testimony Of Women Is Not Permissible In It

[Hadith 27927 to 27939]

Hadith 27927

عن محمّد بن مسلم، عن أبي جعفر (عليه السلام) ـ في حديث ـ قال: جاء رجل إلى علي (عليه السلام)، فقال: يا أمير المؤمنين إني طلقت امرأتي، قال (عليه السلام): ألك بينة؟ قال: لا، قال: اُغرب.

From Muhammad ibn Muslim, from Abu Ja'far (peace be upon him) - in a hadith - he said: A man came to Ali (peace be upon him) and said: O Amir al-Muminin, I have divorced my wife. He (peace be upon him) said: Do you have witnesses? He said: No. He said: Then leave.

Hadith 27928

عن بكير بن أعين وغيره، عن أبي جعفر (عليه السلام) في حديث قال: إن طلقها للعدة أكثر من واحدة، فليس الفضل على الواحدة بطلاق، وإن طلقها للعدة بغير شاهدي عدل فليس طلاقه بطلاق، ولا يجوز فيه شهادة النساء.

From Bukayr ibn A'yan and others, from Abu Ja'far (peace be upon him) in a hadith he said: If he divorced her during the waiting period more than once, then the excess over one is not a valid divorce. And if he divorced her during the waiting period without two just witnesses, then his divorce is not a divorce, and the testimony of women is not permissible in it.

Hadith 27929

عن معمر بن يحيى، عن أبي جعفر، وأبي عبدالله (عليهما السلام) ـ في حديث ـ أنه قال: وإن طلقها في استقبال عدتها طاهرا من غير جماع، ولم يشهد على ذلك رجلين عدلين، فليس طلاقه إياها بطلاق.

From Muammar ibn Yahya, from Abu Ja'far and Abu Abdullah (peace be upon them both) - in a hadith - that he said: If he divorces her at the beginning of her waiting period while she is pure from intercourse, but does not have two just men witness this, then his divorce of her is not a divorce.

Hadith 27930

عن أحمد بن محمّد بن أبي نصر، قال: سألت أبا الحسن (عليه السلام) عن رجل طلق امرأته بعدما غشيها بشهادة عدلين، قال: ليس هذا طلاقا.

From Ahmad ibn Muhammad ibn Abi Nasr, who said: I asked Abu al-Hasan (peace be upon him) about a man who divorced his wife after he had intercourse with her in the presence of two just witnesses. He said: This is not a divorce.

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قلت: فكيف طلاق السنة؟ فقال: يطلقها إذا طهرت من حيضها قبل أن يغشيها بشاهدين عدلين، كما قال الله عزّ وجلّ في كتابه فان خالف ذلك رد إلى كتاب الله.

I said: So how is the divorce according to the Sunnah? He said: He divorces her when she becomes pure from her menstruation before he has intercourse with her, with two just witnesses, as Allah the Mighty and Majestic said in His Book. If he goes against that, he is referred back to the Book of Allah.

قلت: فان طلق على طهر من غيرجماع بشاهد وامرأتين، قال: لا تجوز شهادة النساء في الطلاق، وقد تجوز شهادتهن مع غيرهن في الدم إذا حضرنه.

I said: What if he divorces during a state of purity without intercourse with one witness and two women? He said: The testimony of women is not valid in divorce, though their testimony may be valid with others in matters of blood when they witness it.

قلت: فان أشهد رجلين ناصبيين على الطلاق أيكون طلاقا؟ فقال: من ولد على الفطرة اجيزت شهادته على الطلاق بعد أن يعرف منه خير.

I said: What if he has two Nasibi men witness the divorce, would it be a divorce? He said: Whoever is born upon the natural state (fitrah), his testimony on divorce is accepted after good is known from him.

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Hadith 27931

عن زرارة، عن أبي جعفر (عليه السلام)، أنه سئل عن امرأة، سمعت أن رجلا طلّقها، وجحد ذلك، أتقيم معه؟ قال: نعم، وإن طلاقه بغير شهود ليس بطلاق والطلاق لغير العدة ليس بطلاق، ولا يحل له أن يفعل، فيطلّقها بغير شهود ولغير العدة التي أمر الله عزّ وجلّ بها.

From Zurarah, from Abu Ja'far (peace be upon him), that he was asked about a woman who heard that a man divorced her, but he denied it - should she remain with him? He said: Yes, and indeed his divorce without witnesses is not a divorce, and divorce not according to the waiting period is not a divorce, and it is not lawful for him to do so - to divorce her without witnesses and not according to the waiting period that Allah the Mighty and Majestic commanded.

Hadith 27932

عن أبي الصباح الكنانيّ، عن أبي عبدالله (عليه السلام)، قال: من طلق بغير شهود فليس بشيء.

From Abu al-Sabah al-Kinani, from Abu Abdullah (peace be upon him), he said: Whoever divorces without witnesses, it is nothing.

Hadith 27933

عن محمّد بن مسلم قال: قدم رجل إلى أمير المؤمنين (عليه السلام) بالكوفة، فقال: إنّي طلّقت امرأتي بعدما طهرت من محيضها قبل أن اجامعها، فقال أمير المؤمنين (عليه السلام): أشهدت رجلين ذوي عدل كما أمرك الله؟ فقال: لا، فقال: اذهب، فإنّ طلاقك ليس بشيء.

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From Muhammad ibn Muslim, he said: A man came to Amir al-Muminin (peace be upon him) in Kufa and said: I divorced my wife after she became pure from her menstruation before I had intercourse with her. Amir al-Muminin (peace be upon him) said: Did you have two just men witness it as Allah commanded you? He said: No. He said: Go, for your divorce is nothing.

Hadith 27934

عن زرارة، عن اليسع، عن أبي جعفر (عليه السلام) ـ في حديث ـ قال: لا طلاق على سنة وعلى طهر من غير جماع إلا ببينة، ولو أن رجلا طلق على سنة وعلى طهر من غير جماع ولم يشهد، لم يكن طلاقه طلاقا.

From Zurarah, from al-Yasa, from Abu Ja'far (peace be upon him) - in a hadith - he said: There is no divorce according to the Sunnah and in a state of purity without intercourse except with evidence. If a man were to divorce according to the Sunnah and in a state of purity without intercourse and did not have witnesses, his divorce would not be a divorce.

Hadith 27935

عن محمّد بن مسلم، عن أبي جعفر (عليه السلام)، قال: قام رجل إلى أمير المؤمنين (عليه السلام)، فقال: إني طلقت امرأتي للعدة بغير شهود فقال: ليس طلاقك بطلاق، فارجع إلى أهلك.

From Muhammad ibn Muslim, from Abu Ja'far (peace be upon him), he said: A man stood before Amir al-Muminin (peace be upon him) and said: I divorced my wife during her waiting period without witnesses. He said: Your divorce is not a divorce, so return to your family.

Hadith 27936

عن أحمد بن محمّد، قال: سألته عن الطلاق، فقال: على طهر وكان علي (عليه السلام) يقول: لا يكون طلاق إلا بالشهود، فقال له رجل: إن طلّقها، ولم يشهد، ثمّ أشهد بعد ذلك بأيّام، فمتى تعتد؟ فقال: من اليوم الذي أشهد فيه على الطلاق.

From Ahmad ibn Muhammad, he said: I asked him about divorce, and he said: It should be during purity. And Ali (peace be upon him) used to say: There is no divorce except with witnesses. So a man said to him: If he divorces her without having witnesses, then brings witnesses after that by some days, when does she begin her waiting period? He said: From the day on which he brings witnesses to the divorce.

أقول: هذا محمول على إرادة الطلاق عند الاشهاد ؛ لما يأتي.

I (Hurr Amili) say: This is understood as intending the divorce at the time of witnessing, as will come.

Hadith 27937

الفضل بن الحسن الطبرسي في (مجمع البيان): في قوله تعالى: (وأشهدوا ذوي عدل منكم) قال: معناه: وأشهدوا على الطلاق صيانة لدينكم، وهو المروي عن أئمتنا (عليهم السلام).

Al-Fadl ibn al-Hasan al-Tabarsi in Majma' al-Bayan regarding His saying, the Exalted: "And take as witnesses two just men from among you [Quran, 65:2]," he said: Its meaning is: And take witnesses

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to the divorce as protection for your religion, and this is what is narrated from our Imams (peace be upon them).

Hadith 27938

وقد تقدم في حديث محمّد بن الفضيل، عن أبي الحسن (عليه السلام)، أنّه قال لابي يوسف: إن الدين ليس بقياس كقياسك وقياس أصحابك، إن الله أمر في كتابه بالطلاق، وأكّد فيه بشاهدين، ولم يرض بهما إلا عدلين، وأمر في كتابه بالتزويج، وأهمله بلا شهود، فأتيتم بشاهدين فيما أبطل الله، وأبطلتم شاهدين فيما أكد الله عزّ وجلّ وأجزتم طلاق المجنون والسكران، ثمّ ذكر حكم تظليل المحرم.

It has been mentioned previously in the hadith of Muhammad ibn al-Fudayl, from Abu al-Hasan (peace be upon him), that he said to Abu Yusuf: Religion is not based on analogical reasoning like your reasoning and the reasoning of your companions. Allah commanded divorce in His Book and emphasized it with two witnesses, and He was not pleased with them unless they were just. He commanded marriage in His Book but left it without requiring witnesses. Yet you brought two witnesses in what Allah nullified, and you nullified two witnesses in what Allah the Mighty and Majestic emphasized. You permitted the divorce of the insane and the intoxicated. Then he mentioned the ruling on shading for one in the state of ihram.

Hadith 27939

العياشي في (تفسيره): عن أبي بصير قال: قلت لابي عبدالله (عليه السلام): إن عمر بن رياح زعم أنك قلت: لا طلاق إلا ببينة، فقال: ما أنا قلته بل الله تبارك وتعالى يقوله.

Al-Ayyashi in his Tafsir: From Abu Basir who said: I said to Abu Abdullah (peace be upon him): Umar ibn Riyah claimed that you said there is no divorce except with evidence. He said: I did not say it, rather Allah the Blessed and Exalted says it.

أقول: وتقدم ما يدل على ذلك في الحج وفي الصوم وغير ذلك. ويأتي ما يدل عليه.

I (Hurr Amili) say: What has preceded indicates this in matters of Hajj and fasting and other things. And what will come also indicates it.

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CHAPTER 11

Requirement That Intention And Desire For Divorce Are Conditions For The Validity Of Divorce, Otherwise It Is Invalid

[Hadith 27940 to 27944]

Hadith 27940

عن زرارة، عن اليسع قال: سمعت أبا جعفر (عليه السلام) يقول ـ في حديث ـ: ولو أن رجلا طلق على سنة وعلى طهر من غير جماع، وأشهد، ولم ينو الطلاق، لم يكن طلاقه طلاقا.

From Zurarah, from al-Yasa, who said: I heard Abu Ja'far (peace be upon him) say - in a hadith - : Even if a man divorced according to the Sunnah and during a state of purity without sexual intercourse, and he had witnesses, but he did not intend divorce, his divorce would not be a divorce.

Hadith 27941

عن اليسع، عن أبي عبدالله (عليه السلام)، وعن عبد الواحد بن المختار، عن أبي جعفر (عليه السلام)، أنّهما قالا: لا طلاق إلا لمن أراد الطلاق.

From al-Yasa, from Abu Abdullah (peace be upon him), and from Abd al-Wahid ibn al-Mukhtar, from Abu Ja'far (peace be upon him), that they both said: There is no divorce except for one who intends divorce.

Hadith 27942

عن زرارة، عن أبي عبدالله (عليه السلام) قال: لا طلاق إلا ما اريد به الطلاق.

From Zurarah, from Abu Abdullah (peace be upon him) who said: There is no divorce except what is intended as divorce.

Hadith 27943

عن هشام بن سالم، عن أبي عبدالله (عليه السلام)، قال: لا طلاق إلا لمن أراد الطلاق. وعنه، عن محمّد بن عبدالله بن زرارة، عن محمّد بن أبي عمير،

From Hisham ibn Salim, from Abu Abdullah (peace be upon him), who said: There is no divorce except for one who intends divorce.

Hadith 27944

عن عبد الواحد بن المختار، قال: سمعت أبا جعفر (عليه السلام) يقول: لاطلاق إلا لمن أراد الطلاق.

From Abd al-Wahid ibn al-Mukhtar, who said: I heard Abu Ja'far (peace be upon him) say: There is no divorce except for one who intends divorce.

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أقول: ويأتي ما يدل على ذلك هنا، وفي الظهار، وغير ذلك.

I (Hurr Amili) say: What indicates this will come here, and in the section on zihar, and other places.

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CHAPTER 12

That It Is A Condition For The Validity Of Divorce That Marriage Precedes It And Exists In Actuality, So Divorce Is Not Valid Before Marriage, Even If It Is Made Conditional Upon It**

[Hadith 27945 to 27957]

Hadith 27945

عن الحلبيّ، عن أبي عبدالله (عليه السلام) ـ في حديث ـ أنّه سئل عن رجل قال: كل امرأة أتزوجها ما عاشت امي فهي طالق، فقال: لا طلاق إلا بعد نكاح، ولا عتق إلا بعد ملك.

From al-Halabi, from Abu Abdullah (peace be upon him) - in a hadith - that he was asked about a man who said: Every woman I marry while my mother is alive is divorced. He said: There is no divorce except after marriage, and no emancipation except after ownership.

Hadith 27946

عن محمّد بن قيس، عن أبي جعفر (عليه السلام)، قال: سألته عن رجل قال: إن تزوجت فلانة فهي طالق، وإن اشتريت فلانا فهو حر، وإن اشتريت هذا الثوب فهو (في المساكين)، فقال: ليس بشيء، لا يطلق إلا ما يملك، (ولا يعتق إلا ما يملك)، ولا (يصدق إلا ما) يملك.

From Muhammad ibn Qays, from Abu Ja'far (peace be upon him), he said: I asked him about a man who said: If I marry so-and-so, then she is divorced, and if I buy so-and-so, then he is free, and if I buy this garment, then it is (for the poor). He said: It is nothing. One cannot divorce except what he owns, and one cannot emancipate except what he owns, and one cannot give in sadaqah except what he owns.

Hadith 27947

عن عبدالله بن سليمان، عن أبيه ـ في حديث ـ عن علي بن الحسين (عليه السلام) في رجل سمى امرأة بعينها، وقال: يوم يتزوجها فهي طالق ثلاثاً، ثمّ بدا له أن يتزوّجها، أيصلح ذلك؟ قال: فقال: إنما الطلاق بعد النكاح.

From Abdullah ibn Sulayman, from his father - in a hadith - from Ali ibn al-Husayn (peace be upon him) regarding a man who named a specific woman and said: The day I marry her, she is divorced three times, then he changed his mind and wanted to marry her. Is this permissible? He said: Divorce only occurs after marriage.

Hadith 27948

عن النضر بن قرواش، عن أبي عبدالله (عليه السلام) ـ في حديث ـ قال: لا طلاق قبل نكاح، ولا عتق قبل ملك، ولايتم بعد إدراك.

From al-Nadr ibn Qarwash, from Abu Abdullah (peace be upon him) - in a hadith - he said: There

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is no divorce before marriage, no manumission before ownership, and no orphanhood after reaching maturity.

Hadith 27949

عن سماعة، قال: سألته عن الرجل يقول: يوم أتزوج فلانة فهي طالق، فقال: ليس بشيء، انّه لا يكون طلاق حتى يملك عقده النكاح.

From Sama'ah, he said: I asked him about a man who says: The day I marry so-and-so, she is divorced. He said: It is nothing, for there is no divorce until he possesses the marriage contract.

Hadith 27950

عن أبي بصير، عن أبي عبدالله (عليه السلام) قال: كان الذين من قبلنا يقولون: لا عتاق ولا طلاق إلا بعد ما يملك الرجل.

From Abu Basir, from Abu Abdullah (peace be upon him) who said: Those who came before us used to say: There is no manumission and no divorce except after a man takes possession.

Hadith 27951

عن الحسين بن علوان، عن جعفر، عن أبيه، عن علي (عليه السلام) أنه كان يقول: لا طلاق لمن لا ينكح، ولا عتاق لمن لا يملك. قال: وقال علي (عليه السلام): ولو وضع يده على رأسها.

From al-Husayn ibn Alwan, from Ja'far, from his father, from Ali (peace be upon him) that he used to say: There is no divorce for one who has not married, and no manumission for one who does not own. He said: And Ali (peace be upon him) said: Even if he placed his hand upon her head.

Hadith 27952

وبهذا الإسناد، عن عليّ (عليه السلام)، قال: لاطلاق إلا من بعد نكاح، ولا عتق إلا من بعد ملك.

And with this chain of narration, from Ali (peace be upon him), he said: There is no divorce except after marriage, and no manumission except after ownership.

Hadith 27953

عن زرارة، عن أبى جعفر (عليه السلام)، قال: من قال: فلانة طالق إن تزوجتها وفلان إن اشتريته، فليتزوّج وليشتر فانه ليس يدخل عليه طلاق ولا عتق.

From Zurarah, from Abu Ja'far (peace be upon him), he said: Whoever says "So-and-so is divorced if I marry her" and "So-and-so is freed if I buy him," then let him marry and let him buy, for no divorce or manumission enters upon him.

Hadith 27954

عن معمر بن يحيى عن أبي جعفر (عليه السلام) قال: سألناه عن الرجل يقول: إن اشتريت فلانا أو فلانة فهو حر، وإن اشتريت هذا الثوب فهو (في المساكين)، وإن نكحت فلانة فهي طالق، قال: ليس ذلك بشيء، لا يطلق الرجل إلا ما ملك، ولا يعتق إلا ما (ملك)، ولا يتصدق إلا بما ملك.

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From Mu'ammar ibn Yahya, from Abu Ja'far (peace be upon him), he said: We asked him about a man who says: "If I buy so-and-so (male or female), then he/she is free," and "If I buy this garment, then it is for the poor," and "If I marry so-and-so, then she is divorced." He said: That is nothing. A man cannot divorce except what he owns, nor free except what he owns, nor give in sadaqah except what he owns.

Hadith 27955

عن معمر بن يحيى بن (سالم)، أنّه سمع أبا جعفر (عليه السلام) يقول: لا يطلق الرجل إلا ما (ملك)، ولا يعتق إلا ما (ملك)، ولا يتصدق إلا بما (ملك).

From Mu'ammar ibn Yahya ibn Salim, that he heard Abu Ja'far (peace be upon him) say: A man cannot divorce except what he owns, nor free except what he owns, nor give in sadaqah except what he owns.

Hadith 27956

عن زكريّا بن آدم، قال: سألت الرضا (عليه السلام) عن طلاق السكران والصبي والمعتوه والمغلوب على عقله ومن لم يتزوّج بعد، فقال: لا يجوز.

From Zakariyya ibn Adam, who said: I asked al-Rida (peace be upon him) about the divorce of the intoxicated person, the child, the mentally incapacitated, one who is overcome in his mind, and one who has not yet married. He said: It is not valid.

Hadith 27957

عن حبيب بن أبي ثابت، قال: كنت عند علي بن الحسين (عليه السلام)، فقال له رجل: إني قلت: يوم أتزوج فلانة فهي طالق، فقال: اذهب فتزوّجها، فإنّ الله بدأ بالنكاح قبل الطلاق، فقال: (إذا نكحتم المؤمنات ثمّ طلقتموهن).

From Habib ibn Abi Thabit, who said: I was with Ali ibn al-Husayn (peace be upon him) when a man said to him: I said: "The day I marry so-and-so, she is divorced." He said: Go and marry her, for Allah began with marriage before divorce, as He said: "When you marry believing women and then divorce them [Quran, 65:1]."

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CHAPTER 13

Regarding One Who Stipulates To His Wife Upon Marrying Her That If He Marries Another Woman Over Her, Or Takes A Concubine, Or Abandons Her, Then She Is Divorced - The Divorce Does Not Occur Even If He Does That

[Hadith 27958 to 27959]

Hadith 27958

عن الحلبي، عن أبي عبدالله (عليه السلام)، أنّه سئل عن رجل قال لامرأته: إن تزوجت عليك، أو بت عنك فأنت طالق؟ فقال: إن رسول الله (صلى الله عليه وآله) قال: من شرط لامرأته شرطا سوى كتاب الله عزّ وجلّ لم يجز ذلك عليه ولا له.

From al-Halabi, from Abu Abdullah (peace be upon him), that he was asked about a man who said to his wife: If I marry another woman over you, or spend the night away from you, then you are divorced. He said: Indeed, the Messenger of Allah (peace and blessings be upon him and his family) said: Whoever stipulates a condition for his wife other than what is in the Book of Allah the Mighty and Majestic, that is not permissible against him nor for him.

Hadith 27959

عن محمّد بن قيس، عن أبي جعفر (عليه السلام) قال: قضى علي (عليه السلام) في رجل تزوج امرأة، وشرط لها إن هو تزوج عليها امرأة، أو هجرها، أو اتخذ عليها سريّة، فهي طالق، فقضى في ذلك أن شرط الله قبل شرطكم فان شاء وفى لها بالشرط، وإن شاء أمسكها واتخذ عليها، ونكح عليها.

From Muhammad ibn Qays, from Abu Ja'far (peace be upon him) who said: Ali (peace be upon him) judged regarding a man who married a woman and stipulated to her that if he married another woman over her, or abandoned her, or took a concubine over her, then she would be divorced. He judged in that matter that Allah's condition comes before your condition. So if he wishes, he may fulfill the condition for her, and if he wishes, he may keep her and take another over her and marry over her.

أقول: وتقدم مايدل على ذلك في المهور وغيرها، ويأتي ما يدل عليه.

I (Hurr Amili) say: What has preceded indicates this in the section on dowries and other matters, and what comes later will also indicate it.

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CHAPTER 14

That It Is A Condition For The Validity Of Divorce That The Formula Be Pronounced Verbally, So It Does Not Take Effect By Writing Unless It Is Spoken

[Hadith 27960 to 27962]

Hadith 27960

عن زرارة، قال: سألته عن رجل كتب إلى امرأته بطلاقها، أو كتب بعتق مملوكه، ولم ينطق به لسانه، قال: ليس بشيء حتى ينطق به.

From Zurarah, he said: I asked him about a man who wrote to his wife divorcing her, or wrote about freeing his slave, but did not pronounce it with his tongue. He said: It is nothing until he pronounces it.

Hadith 27961

عن زرارة، قال: قلت لابي جعفر (عليه السلام): رجل كتب بطلاق امرأته، أو بعتق غلامه، ثمّ بدا له ـ فمحاه، قال: ليس ذلك بطلاق، ولا عتاق حتى يتكلم به.

From Zurarah, he said: I said to Abu Ja'far (peace be upon him): A man wrote the divorce of his wife, or the freeing of his slave, then changed his mind and erased it. He said: That is not divorce, nor manumission until he speaks it.

Hadith 27962

عن أبي حمزة الثمّاليّ، قال: سألت أبا جعفر (عليه السلام) عن رجل قال لرجل: اكتب يا فلان إلى امرأتي بطلاقها، أو اكتب إلى عبدي بعتقه، يكون ذلك طلاقا أو عتقا؟ قال: لا يكون طلاقا ولا عتقا حتى ينطق به لسانه، أو يخطّه بيده، وهو يريد الطلاق أو العتق، ويكون ذلك منه بالاهلة والشهود و يكون غائبا من أهله.

From Abu Hamza al-Thumali, he said: I asked Abu Ja'far (peace be upon him) about a man who said to another man: "Write, O so-and-so, to my wife regarding her divorce," or "Write to my slave regarding his emancipation" - would this constitute divorce or emancipation? He said: It would not constitute divorce or emancipation until his tongue speaks it, or he writes it with his own hand, while he intends divorce or emancipation, and this should be done by him with witnesses and he should be absent from his family.

أقول: حكم الكتابة هنا محمول إما على التقية، وإما على التلفظ معها، أو على أن علم الزوجة بالطلاق والمملوك بالعتق يكون إما بسماع النطق، أو بالكتابة، أو على من لا يقدر على النطق كالاخرس لما يأتي، والله أعلم.

I (Hurr Amili) say: The ruling regarding writing here is understood either as being due to taqiyyah (precautionary dissimulation), or as being accompanied by verbal utterance, or that the wife's knowledge of the divorce and the slave's knowledge of emancipation may be either through

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hearing the pronouncement, or through writing, or it applies to one who cannot speak such as a mute person as will come later, and Allah knows best.

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CHAPTER 15

The Non-occurrence Of Divorce Through Indirect Expressions (Kinaya), Such As Saying: "You Are Free" Or "You Are Clear" Or "You Are Cut Off" Or "You Are Separated" Or "You Are Forbidden"

[Hadith 27963 to 27972]

Hadith 27963

عن حماد بن عثمان، عن الحلبيّ، عن أبي عبدالله (عليه السلام)، قال: سألته عن رجل قال لامرأته: أنت مني خليّة أو بريّة، أو بتّة، أو بائن، أو حرام، قال: ليس بشيء.

From Hammad ibn Uthman, from al-Halabi, from Abu Abdullah (peace be upon him), who said: I asked him about a man who said to his wife: "You are free from me" or "You are clear" or "You are cut off" or "You are separated" or "You are forbidden." He said: It is nothing.

Hadith 27964

عن زرارة، عن أبي جعفر (عليه السلام)، قال: سألته عن رجل قال لامرأته: أنت عليّ حرام فقال: لو كان لي عليه سلطان لاوجعت رأسه، وقلت له: الله أحلها، فمن حرمها عليك؟ أنّه لم يزد على أن كذب، فزعم أن ما أحل الله له حرام، ولا يدخل عليه طلاق ولا كفارة.

From Zurarah, from Abu Ja'far (peace be upon him), who said: I asked him about a man who said to his wife: "You are forbidden to me." He said: If I had authority over him, I would have struck his head and said to him: "Allah made her lawful, so who made her forbidden to you?" He did nothing more than lie, claiming that what Allah made lawful for him is forbidden. No divorce enters into it, nor any expiation.

فقلت له: فقول الله عزّ وجلّ: (يا أيها النبي لم تحرم ما أحل الله لك تبتغي مرضات أزواجك والله غفور رحيم

I said to him: What about the saying of Allah, the Mighty and Glorious: "O Prophet, why do you prohibit what Allah has made lawful for you, seeking to please your wives? And Allah is Forgiving and Merciful. Allah has already ordained for you the dissolution of your oaths [Quran, 66:1-2]." He made expiation obligatory upon him for it.

قد فرض الله لكم تحلة أيمانكم) فجعل عليه فيه الكفّارة، فقال: إنما حرم عليه جاريته مارية، وحلف أن لا يقربها، وإنما جعل عليه الكفارة في الحلف، ولم يجعل عليه في التحريم.

He (the Imam) said: He only made forbidden to himself his slave-girl Mariyah, and swore not to approach her. The expiation was made obligatory upon him only for the oath, not for the prohibition.

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Hadith 27965

عن محمّد بن مسلم، قال: سألت أبا جعفر (عليه السلام) عن الرجل يقول لامرأته: أنت منّي خليّة، أو برية، أو بتّة، أو حرام؟ فقال: ليس بشيء.

From Muhammad ibn Muslim, he said: I asked Abu Ja'far (peace be upon him) about a man who says to his wife: "You are free from me," or "You are released," or "You are severed," or "You are forbidden"? He said: It is nothing.

Hadith 27966

عن سماعة، قال: سألته عن رجل قال لامرأته: أنت مني بائن، وأنت منّي خليّة، وأنت مني برية؟ فقال: ليس بشيء.

From Sama'ah, he said: I asked him about a man who said to his wife: "You are separated from me," and "You are free from me," and "You are released from me"? He said: It is nothing.

Hadith 27967

عن محمّد بن مسلم، أنّه سأل أبا جعفر (عليه السلام) عن رجل قال لامرأته: أنت عليّ حرام، أو بائنة، أو بتّة، أو بريّة، أو خليّة؟ قال: هذا كله ليس بشيء. الحديث.

From Muhammad ibn Muslim, that he asked Abu Ja'far (peace be upon him) about a man who said to his wife: "You are forbidden to me," or "You are separated," or "You are severed," or "You are released," or "You are free"? He said: All of this is nothing. End of hadith.

Hadith 27968

عن زرارة، عن أبي جعفر (عليه السلام) قال: قلت له: ما تقول في رجل قال لامرأته: أنت عليّ حرام، فانّا نروى بالعراق: أنّ عليّا (عليه السلام) جعلها ثلاثا، فقال: كذبوا، لم يجعلها طلاقا، ولو كان لي عليه سلطان لاوجعت رأسه ثمّ أقول: إن الله أحلها لك، فماذا حرّمها عليك ما زدت على أن كذبت، فقلت لشيء أحلّه الله لك: إنه حرام.

From Zurarah, from Abu Ja'far (peace be upon him) who said: I said to him: What do you say about a man who said to his wife: You are forbidden to me? We narrate in Iraq that Ali (peace be upon him) made it three divorces. He said: They lied. He did not make it a divorce, and if I had authority over him I would crack his head, then I would say: Allah has made her lawful for you, so what has made her forbidden to you? You have done nothing more than lie, for you said about something Allah made lawful for you that it is forbidden.

Hadith 27969

عن أبي مخلد السرّاج، عن أبي عبدالله (عليه السلام)، قال: قال لي شيبة بن عقال: بلغني أنك تزعم أن من قال: ما أحل الله عليّ حرام، أنّك لا ترى ذلك شيئا؟ فقلت: أما قولك: الحلّ عليّ حرام، فهذا أمير المؤمنين الوليد جعل ذلك في ام سلامة امرأته، وأنه بعث يستفتي أهل العراق، وأهل الحجاز، وأهل الشام فاختلفوا عليه، فأخذ بقول أهل الحجاز، إنّ ذلك ليس بشيء.

From Abu Mikhlad al-Sarraj, from Abu Abdullah (peace be upon him), who said: Shaybah ibn Uqal said to me: It has reached me that you claim that whoever says "What Allah has made lawful is forbidden to me," you do not consider that to be anything? I said: As for your saying "The lawful is

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forbidden to me," this is what Amir al-Muminin al-Walid made regarding Umm Salamah his wife, and he sent to seek religious rulings from the people of Iraq, the people of Hijaz, and the people of Syria, but they differed with him. So he took the position of the people of Hijaz that this is nothing.

Hadith 27970

عن محمّد بن مسلم، قال: قلت لابي عبدالله (عليه السلام): رجل قال لامرأته: أنت عليَّ حرام، فقال: ليس عليه كفارة ولا طلاق.

From Muhammad ibn Muslim, who said: I said to Abu Abdullah (peace be upon him): A man who said to his wife: You are forbidden to me. He said: There is no expiation upon him nor divorce.

Hadith 27971

علي بن جعفر في كتابه، عن أخيه موسى بن جعفر (عليه السلام)، قال: سألته عن الرجل يقول لامرأته: أنت علي حرام؟ قال: هي يمين يكفرها، قال الله تعالى لمحمّد صلى الله عليه وآله: (يا أيها النبي لم تحرم ما أحل الله لك تبتغي مرضات أزواجك والله غفور رحيم * قد فرض الله لكم تحلة أيمانكم والله مولاكم) فجعلها يميناً، فكفّرها نبيُّ الله (صلى الله عليه واله)

Ali ibn Ja'far in his book, from his brother Musa ibn Ja'far (peace be upon him), said: I asked him about a man who says to his wife: You are forbidden to me. He said: It is an oath that he must expiate. Allah the Exalted said to Muhammad (peace be upon him and his family): "O Prophet, why do you forbid what Allah has made lawful for you, seeking to please your wives? And Allah is Forgiving and Merciful. Allah has already ordained for you the dissolution of your oaths. And Allah is your protector [Quran, 66:1-2]". So He made it an oath, and the Prophet of Allah (peace be upon him and his family) expiated it.

قال: وسألته بما يكفر يمينه؟ قال: إطعام عشرة مساكين فقلت: كم إطعام كل مسكين؟ فقال: مد مد. قال: وسألته عن هذا الآية: (أو كسوتهم) للمساكين؟ فقال: ثوب يواري به عورته.

He said: I asked him about what expiates his oath. He said: Feeding ten poor people. I said: How much food for each poor person? He said: A mudd, a mudd. He said: I asked him about this verse: "... or clothe them ... [Quran, 5:89]" regarding the poor people. He said: A garment with which he covers his nakedness.

أقول: هذا محمول على الحلف لما مرّ، أو على التقية، أو على الاستحباب.

I (Hurr Amili) say: This is to be understood as referring to an oath as previously mentioned, or due to taqiyyah, or as a recommendation.

Hadith 27972

عن علي بن جعفر، عن أخيه موسى بن جعفر (عليه السلام)، قال: سألته عن رجل قال لامرأته: إني أحببت أن تبيني، فلم يقل شيئاً حتّى افترقا، ما عليه؟ قال: ليس عليه شيء، وهي امرأته.

From Ali ibn Ja'far, from his brother Musa ibn Ja'far (peace be upon him), said: I asked him about a man who said to his wife: I wish you would separate yourself from me, but he did not say anything until they separated. What is upon him? He said: There is nothing upon him, and she is his wife.

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CHAPTER 16

Formula Of Divorce

[Hadith 27973 to 27979]

Hadith 27973

عن ابن سماعة، قال: ليس الطلاق كما روى بكير بن أعين، أن يقول لها، وهي طاهر من غير جماع: أنت طالق، ويشهد شاهدين عدلين، وكلّ ما سوى ذلك فهي ملغى.

From Ibn Sama'a, he said: Divorce is not as Bukayr ibn A'yan narrated, that he should say to her while she is pure from menstruation without having had intercourse: "You are divorced," and have two just witnesses testify. Everything other than that is invalid.

Hadith 27974

عن عبدالله بن سنان، عن أبي عبدالله (عليه السلام)، قال: يرسل إليها فيقول الرسول: اعتدّي، فانّ فلانا قد فارقك، قال ابن سماعة: وإنما معنى قول الرسول: اعتدي، فانّ فلاناً قد فارقك يعني: الطلاق، أنّه لا تكون فرقة إلا بطلاق.

From Abdullah ibn Sinan, from Abu Abdullah (peace be upon him), he said: He sends a messenger to her, and the messenger says: "Observe your waiting period, for so-and-so has separated from you." Ibn Sama'a said: The meaning of the messenger's statement "Observe your waiting period, for so-and-so has separated from you" refers to divorce, meaning that there is no separation except through divorce.

Hadith 27975

عن محمّد بن مسلم، أنّه سأل أبا جعفر (عليه السلام) عن رجل قال لامرأته: أنت عليّ حرام، أو بائنة، أو بتّة، أو بريّة، أو خليّة؟ قال: هذا كله ليس بشيء إنما الطلاق أن يقول لها في قبل العدة بعدما تطهر من محيضها قبل أن يجامعها: أنت طالق، أو اعتدي، يريد بذلك: الطلاق، ويشهد على ذلك رجلين عدلين.

From Muhammad ibn Muslim, that he asked Abu Ja'far (peace be upon him) about a man who said to his wife: "You are forbidden to me," or "You are separated," or "You are cut off," or "You are free," or "You are released"? He said: All of this is nothing. Divorce is only when he says to her during the waiting period after she has purified herself from her menstruation before he has intercourse with her: "You are divorced," or "Observe your waiting period," intending by that divorce, and two just men witness this.

Hadith 27976

عن الحلبيّ، عن أبي عبدالله (عليه السلام)، قال: الطلاق: أن يقول لها: اعتدي، أو يقول لها: أنت طالق.

From al-Halabi, from Abu Abdullah (peace be upon him), he said: Divorce is when he says to her: "Observe your waiting period," or he says to her: "You are divorced."

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Hadith 27977

عن محمّد بن قيس، عن أبي جعفر (عليه السلام)، قال: الطلاق للعدّة: أن يطلق الرجل امرأته عند كل طهر يرسل إليها أن اعتدي فان فلانا قد طلقك، قال: وهو أملك برجعتها ما لم تنقض عدتها.

From Muhammad ibn Qays, from Abu Ja'far (peace be upon him), he said: Divorce for the waiting period is when a man divorces his wife at each purification, sending to her that she should observe her waiting period, for so-and-so has divorced you. He said: And he has more right to take her back as long as her waiting period has not expired.

ورواه الشيخ بإسناده، عن محمّد بن يعقوب وكذا كل ما قبله. قال الشيخ: قوله: اعتدي إنما يكون إذا تقدمه قوله: أنت طالق، وإلا فليس له معنى، فانّه لا بدّ أن يقول: اعتدي، لأنّي طلّقتك، فالاعتبار بالطلاق، لا بهذا القول. انتهى. ويحتمل أن يحمل على التقيّة، أو على ما تقدم، والله أعلم.

The Shaykh narrated it through his chain from Muhammad ibn Ya'qub, and likewise everything before it. The Shaykh said: His statement "observe your waiting period" is only valid when preceded by his statement "you are divorced," otherwise it has no meaning, for he must say "observe your waiting period because I have divorced you," so the consideration is with the divorce, not with this statement. End quote. It is possible to interpret this as taqiyyah, or according to what was mentioned previously, and Allah knows best.

Hadith 27978

عن السكوني، عن جعفر، عن أبيه، عن عليّ (عليهم السلام) في الرجل، يقال له: أطلقت امرأتك؟ فيقول: نعم، قال: قال: قد طلقها حينئذ.

From al-Sakuni, from Ja'far, from his father, from Ali (peace be upon them) regarding a man who is asked: "Have you divorced your wife?" and he says: "Yes." He said: He said: He has indeed divorced her at that moment.

Hadith 27979

عن الحسن بن زياد، عن أبي عبدالله (عليه السلام)، قال: الطلاق: أن يقول الرجل لامرأته: اختاري، فان اختارت نفسها فقد بانت منه، وإن اختارت زوجها فليس بشيء، أو يقول: أنت طالق، فأيّ ذلك فعل فقد حرمت عليه. الحديث.

From al-Hasan ibn Ziyad, from Abu Abdullah (peace be upon him), he said: Divorce is when a man says to his wife: "Choose," and if she chooses herself, then she is separated from him, and if she chooses her husband, then it is nothing. Or he says: "You are divorced," and whichever of these he does, she becomes forbidden to him.

قال الشيخ: أحاديث التخيير محمولة على التقية. أقول: وتقدم ما يدل على ذلك في المصاهرة في أحاديث المطلقة على غير السنة، ويأتي ما يدل عليه.

The Shaykh said: The hadiths of giving choice (takhyir) are to be understood as based on taqiyyah. I (Hurr Amili) say: What has preceded indicating this has been mentioned in the chapter on marriage relationships in the hadiths of the woman divorced contrary to the Sunnah, and what

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indicates this will come.

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CHAPTER 17

Permissibility Of Divorce In Any Language When Arabic Is Not Possible

[Hadith 27980 to 27980]

Hadith 27980

عن وهب بن وهب، عن جعفر، عن أبيه، عن عليّ (عليه السلام)، قال: كل طلاق بكل لسان فهو طلاق.

From Wahb ibn Wahb, from Ja'far, from his father, from Ali (peace be upon him), who said: Every divorce in any language is a divorce.

أقول: قد قيده جماعة عن علمائنا بتعذر العربية، لما تقدم من أنه لا يصح الطلاق إلا بصيغة خاصّة، وهي عربية، وتقدم ما يدل على ذلك عموما في القراءة في الصلاة.

I (Hurr Amili) say: A group of our scholars have qualified this with the condition that Arabic is not possible, based on what has preceded regarding that divorce is not valid except with a specific formula, which is Arabic. What has preceded generally indicates this regarding recitation in prayer.

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CHAPTER 18

That Divorce Suspended Upon A Condition Does Not Occur, Nor Does That Which Is Made As An Oath

[Hadith 27981 to 27987]

Hadith 27981

عن الحلبي، عن أبي عبدالله (عليه السلام)، أنّه سئل عن رجل قال لامرأته: إن تزوجت عليك، أو بت عنك فأنت طالق؟ فقال: إن رسول الله (صلى الله عليه وآله) قال: من شرط شرطا سوى كتاب الله عزّ وجلّ، لم يجز ذلك عليه ولا له.

From al-Halabi, from Abu Abdullah (peace be upon him), that he was asked about a man who said to his wife: "If I marry another woman besides you, or spend a night away from you, then you are divorced." He said: Indeed, the Messenger of Allah (may Allah bless him and his family) said: "Whoever stipulates a condition other than the Book of Allah, the Mighty and Majestic, that is not permissible for him or against him."

Hadith 27982

عن عبدالله بن سنان، عن أبي عبدالله (عليه السلام)، قال في رجل قال: امرأته طالق، ومماليكه أحرار، إن شربت حراما أو حلالا من الطلا أبدا، فقال: أما الحرام فلا يقربه أبدا، إن حلف أو لم يحلف، وأما الطلا فليس له أن يحرم ما أحل الله عزّ وجلّ، قال الله عزّ وجلّ: (يا أيها النبي لم تحرّم ما أحل الله لك)، فلا تجوز يمين في تحريم حلال، ولا تحليل حرام، ولا قطيعة رحم.

From Abdullah ibn Sinan, from Abu Abdullah (peace be upon him), he said regarding a man who said: "My wife is divorced and my slaves are free if I drink anything forbidden or permissible from wine ever." He said: As for the forbidden, he should never approach it, whether he swore an oath or did not swear. As for the wine, it is not for him to prohibit what Allah, the Mighty and Majestic, has made permissible. Allah, the Mighty and Majestic, said: "O Prophet, why do you prohibit what Allah has made lawful for you?" [Quran, 66:1] So an oath is not valid in prohibiting what is permissible, nor in making permissible what is forbidden, nor in severing family ties.

Hadith 27983

عن أبي اسامة الشحام، قال: قلت لابي عبدالله (عليه السلام): إن لي، قريباً لي، أو صهرا لي حلف إن خرجت امرأته من الباب فهي طالق ثلاثا، فخرجت، فقد دخل صاحبها منها ماشاء الله من المشقّة، فأمرني أن أسألك، فأصغى إلي، فقال: مره فليمسكها فليس بشيء، ثمّ التفت إلى القوم فقال: سبحان الله يأمرونها أن تتزوّج، ولها زوج.

From Abu Usama al-Shahham, who said: I said to Abu Abdullah (peace be upon him): I have a relative of mine, or a brother-in-law of mine, who swore that if his wife left through the door, she would be divorced three times. So she left, and her husband has entered into whatever distress Allah willed from this matter. He ordered me to ask you. So he listened to me, then said: Tell him to keep her, for it is nothing. Then he turned to the people and said: Glory be to Allah! They order

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her to marry while she has a husband.

Hadith 27984

عن السياري، عن أبي الحسن (عليه السلام)، رفعه قال: جاء رجل إلى عمر، فقال: إن امرأته نازعته، فقالت له: يا سفلة، فقال لها: إن كان سفله فهي طالق، فقال له عمر: إن كنت ممن يتبع القصاص، ويمشي في غير حاجة، ويأتي أبواب السلطان فقد بانت منك.

From al-Sayyari, from Abu al-Hasan (peace be upon him), in a raised narration, he said: A man came to Umar and said: My wife quarreled with me and said to me: "O lowly one." So I said to her: "If I am lowly, then she is divorced." Umar said to him: If you are one who follows tales, walks without need, and comes to the doors of rulers, then she is separated from you.

فقال له أمير المؤمنين (عليه السلام): ليس كما قلت إليّ، فقال له عمر: ايته، فاستمع مايفتيك، فأتاه، فقال له: إن كنت لا تبالي ما قلت، وما قيل لك فانت سفلة، وإلاّ فلا شيء عليك.

Then Amir al-Mu'minin (peace be upon him) said to him: It is not as you said. Come to me. So Umar said to him: Go to him and listen to what he gives you as a legal ruling. So he came to him, and he said to him: If you do not care what you said and what was said to you, then you are lowly, otherwise there is nothing upon you.

أقول: هذا هو ظاهر في التقية.

I (Hurr Amili) say: This is apparent in taqiyyah.

Hadith 27985

عن إسماعيل الجعفيّ، قال: قلت لابي جعفر (عليه السلام): أمر بالعشار ومعي مال فيستحلفني، فان حلفت له تركني، وإن لم أحلف له فتشني وظلمني، قال: احلف له، قلت: فانه يستحلفني بالطلاق، قال: احلف له، فقلت: فانّ المال لا يكون لي، قال: فعن مال أخيك، إنّ رسول الله (صلى الله عليه وآله) ردّ طلاق ابن عمر، وقد طلق امرأته ثلاثا، وهي حائض، فلم ير رسول الله (صلى الله عليه وآله) ذلك شيئا.

From Ismail al-Ju'fi, who said: I said to Abu Ja'far (peace be upon him): I was ordered by the tax collector and I have wealth with me, so he makes me swear an oath. If I swear to him, he leaves me alone, but if I do not swear to him, he searches me and oppresses me. He said: Swear to him. I said: But he makes me swear by divorce. He said: Swear to him. So I said: But the wealth is not mine. He said: Then concerning your brother's wealth. Indeed, the Messenger of Allah (may Allah bless him and his family) rejected the divorce of Ibn Umar, even though he had divorced his wife three times while she was menstruating, and the Messenger of Allah (may Allah bless him and his family) did not consider that to be anything.

Hadith 27986

عن يحيى بن عبدالله بن الحسن، عن أبي عبدالله (عليه السلام)، قال: سمعته يقول: لا يجوز الطلاق في استكراه، ولا تجوز يمين في قطيعة رحم، ولا في شيء من معصية الله، ولا يجوز عتق في استكراه، فمن حلف، أو حُلّف في شيء من هذا،

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وفعله، فلا شيء عليه،

From Yahya ibn Abdullah ibn al-Hasan, from Abu Abdullah (peace be upon him), he said: I heard him say: Divorce is not valid under coercion, nor is an oath valid in cutting ties of kinship, nor in anything involving disobedience to Allah, nor is emancipation valid under coercion. Whoever swears or is made to swear in any of these matters and then does it, there is nothing upon him.

قال: وإنما الطلاق ما اريد به الطلاق من غير استكراه، ولا إضرار على العدة والسنة على طهر بغير جماع وشاهدين، فمن خالف هذا فليس طلاقه ولا يمينه بشيء، يردّ إلى كتاب الله عزّ وجلّ.

He said: Divorce is only what is intended as divorce without coercion and without harm, following the waiting period and the proper way - during purity without sexual intercourse and with two witnesses. Whoever violates this, his divorce and his oath are nothing - it is referred back to the Book of Allah, the Mighty and Majestic.

Hadith 27987

الفضل بن الحسن الطبرسي في (مجمع البيان): عن أبي جعفر، وأبي عبدالله (عليهما السلام) في قوله تعالى: (ولاتتبعوا خطوات الشيطان) قالا: إن من خطوات الشيطان الحلف بالطلاق، والنذور في المعاصي، وكل يمين بغير الله تعالى.

Al-Fadl ibn al-Hasan al-Tabarsi in Majma' al-Bayan: From Abu Ja'far and Abu Abdullah (peace be upon them both) regarding His saying, the Exalted: "And do not follow the footsteps of Satan [Quran, 2:168]." They said: Among the footsteps of Satan are swearing by divorce, making vows in acts of disobedience, and every oath by other than Allah the Exalted.

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CHAPTER 19

Permissibility Of Divorce By The Mute Through Writing, Gestures, And Comprehensible Actions With Witnessing And Conditions, And It Is Not Permissible For His Guardian To Divorce On His Behalf

[Hadith 27988 to 27992]

Hadith 27988

عن أحمد بن محمّد بن أبي نصر البزنطي، أنّه سأل أبا الحسن الرضا (عليه السلام) عن الرجل تكون عنده المرأة، يصمت ولا يتكلّم، قال: أخرس هو؟ قلت: نعم، ويعلم منه بغض لامرأته وكراهة لها، أيجوز أن يطلق عنه وليه؟ قال: لا، ولكن يكتب ويشهد على ذلك، قلت: أصلحك اللّه، فانّه لا يكتب، ولا يسمع، كيف يطلقها؟ قال: بالذي يعرف به من أفعاله مثل ما ذكرت من كراهته وبغضه لها.

From Ahmad ibn Muhammad ibn Abi Nasr al-Bazanti, that he asked Abu al-Hasan al-Rida (peace be upon him) about a man who has a wife with him, he remains silent and does not speak. He said: Is he mute? I said: Yes, and hatred for his wife and dislike for her is understood from him. Is it permissible for his guardian to divorce on his behalf? He said: No, but he should write and have witnesses to that. I said: May Allah rectify you, but he does not write nor hear, how can he divorce her? He said: By that which is known from his actions, such as what you mentioned of his dislike and hatred for her.

Hadith 27989

عن أبان بن عثمّان، قال: سألت أبا عبداللّه (عليه السلام) عن طلاق الخرس، قال: يلف قناعها على رأسها، ويجذبه.

From Aban ibn Uthman, he said: I asked Abu Abdullah (peace be upon him) about the divorce of the mute. He said: He wraps her head covering around her head and pulls it.

Hadith 27990

عن السكوني، قال: طلاق الاخرس أن يأخذ مقنعتها، ويضعها على رأسها، ويعتزلها.

From al-Sakuni, he said: The divorce of a mute man is that he takes her head covering and places it on her head, then separates from her.

Hadith 27991

عن يونس في رجل أخرس كتب في الارض بطلاق امرأته، قال: إذا فعل في قبل الطهر بشهود، وفهم عنه كما يفهم عن مثله، ويريد الطلاق، جاز طلاقه على السنة.

From Yunus regarding a mute man who wrote on the ground the divorce of his wife, he said: If he does this during the period of purity with witnesses present, and it is understood from him as it would be understood from his like, and he intends divorce, then his divorce is valid according to

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the Sunnah.

Hadith 27992

عن أبي بصير عن أبي عبدالله (عليه السلام)، قال: طلاق الاخرس أن يأخذ مقنعتها، ويضعها على رأسها، ثمّ يعتزلها. أقول: وتقدم ما يدل على ذلك في القراءة في الصلاة عموما.

From Abu Basir from Abu Abdullah (peace be upon him), he said: The divorce of a mute man is that he takes her head covering and places it on her head, then separates from her. I (Hurr Amili) say: What has preceded regarding this has been mentioned in the section on recitation in prayer in general.

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CHAPTER 20

That It Is Required For The Two Witnesses To Be Present Together When Hearing The Single Divorce Formula. If They Are Separated, The Divorce Becomes Invalid. And If He Divorced Without Witnessing, Then Had Witnesses Afterward, The First (Divorce) Is Invalid.

[Hadith 27993 to 27994]

Hadith 27993

عن أحمد بن محمّد ابن ابي نصر، قال: سألت أبا الحسن (عليه السلام) عن رجل طلق امرأته على طهر من غير جماع، وأشهد اليوم رجلا، ثمّ مكث خمسة أيّام، ثمّ أشهد آخر؟ فقال: إنّما امر أن يشهدا جميعا.

From Ahmad ibn Muhammad ibn Abi Nasr, he said: I asked Abu al-Hasan (peace be upon him) about a man who divorced his wife during a period of purity without intercourse, and had one man witness on that day, then waited five days, then had another witness? He said: He was only commanded that they both witness together.

Hadith 27994

عن محمّد بن إسماعيل بن بزيع، عن الرضا (عليه السلام)، قال: سألته عن تفريق الشاهدين في الطلاق؟ فقال: نعم، وتعتدُّ من أول الشاهدين، وقال: لا يجوز حتى يشهدا جميعا.

From Muhammad ibn Ismail ibn Buzay', from al-Rida (peace be upon him), he said: I asked him about separating the witnesses in divorce? He said: Yes, and she observes the waiting period from the first of the witnesses. And he said: It is not permissible until they both witness together.

أقول: حمله الشيخ على التفريق في الاستشهاد لا في الاشهاد، ويحتمل الحمل على التقيّة، وقد تقدّم ما يدلّ على الحكمين، ويأتي ما يدل عليه هنا، وفي أقسام الطلاق.

I (Hurr Amili) say: The Shaykh interpreted this as referring to separation in seeking testimony, not in the actual witnessing. It is also possible to interpret it as taqiyyah. What has preceded indicates both rulings, and what follows will indicate this here and in the sections on types of divorce.

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CHAPTER 21

That It Is Not A Condition For The Validity Of Divorce That One Says To The Witnesses "Bear Witness," Rather It Suffices To Let Them Hear The Formula

[Hadith 27995 to 27997]

Hadith 27995

عن أحمد بن محمّد بن أبي نصر قال: سألت أبا الحسن (عليه السلام) عن رجل كانت له امرأة طهرت من محيضها، فجاء الى جماعة، فقال: فلانة طالق، يقع عليها الطلاق ولم يقل: اشهدوا؟ قال: نعم.

From Ahmad ibn Muhammad ibn Abi Nasr who said: I asked Abu al-Hasan (peace be upon him) about a man who had a wife who became pure from her menstruation, then he came to a group of people and said: So-and-so is divorced. Does the divorce fall upon her even though he did not say "Bear witness"? He said: Yes.

Hadith 27996

عن صفوان، عن أبي الحسن الرضا (عليه السلام)، قال: سئل عن رجل طهرت امرأته من حيضها، فقال: فلانة طالق، وقوم يسمعون كلامه، ولم يقل لهم: اشهدوا، أيقع الطلاق عليها؟ قال: نعم، هذه شهادة.

From Safwan, from Abu al-Hasan al-Rida (peace be upon him), he said: He was asked about a man whose wife became pure from her menstruation, then he said: So-and-so is divorced, while people were listening to his speech, but he did not say to them "Bear witness." Does the divorce fall upon her? He said: Yes, this is testimony.

Hadith 27997

عن علي بن أحمد بن أشيم، قال: سألته وذكر مثله، وزاد: أفتترك معلقة.

From Ali ibn Ahmad ibn Ashyam, he said: I asked him and mentioned the same thing, and he added: Do you leave her suspended?

أقول: وتقدم ما يدل على ذلك بعمومه وإطلاقه، ويأتي ما يدل عليه.

I (Hurr Amili) say: And what has preceded indicates this through its generality and absoluteness, and what follows will indicate it.

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CHAPTER 22

That Two Witnesses Suffice For The Validity Of Divorce Of Two Or More Women With One Formula Or Two Formulas Or More, Provided The Witnesses Hear Each Formula

[Hadith 27998 to 27998]

Hadith 27998

عن زرارة، قال: قلت لابي جعفر (عليه السلام): ما تقول في رجل أحضر شاهدين عدلين، وأحضر امرأتين له، وهما طاهرتان من غير جماع، ثمّ قال: اشهدا إن امرأتي هاتين طالق، وهما طاهرتان، أيقع الطلاق؟ قال: نعم.

From Zurarah, he said: I said to Abu Ja'far (peace be upon him): What do you say about a man who brings two just witnesses and brings two of his wives who are both pure (not menstruating) and have not had intercourse, then says: "Bear witness that these two wives of mine are divorced, and they are both pure" - does the divorce take effect? He said: Yes.

أقول: وتقدم ما يدل على ذلك عموما ويأتي ما يدل عليه.

I (Hurr Amili) say: What has preceded indicates this in general terms, and what follows will also indicate it.

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CHAPTER 23

The Fact That Knowledge Of The Witnesses Regarding The Man And Woman Is Not A Condition For The Occurrence Of Divorce

[Hadith 27999 to 28000]

Hadith 27999

عن أبي بصير ـ يعني المرادي ـ قال: سألت أبا جعفر (عليه السلام) عن رجل تزوّج أربع نسوة في عقدة واحدة، أو قال في مجلس واحد ومهورهن مختلفة، قال: جائز له ولهن،

From Abu Basir - meaning al-Muradi - he said: I asked Abu Ja'far (peace be upon him) about a man who married four women in one contract, or he said in one session, and their dowries were different. He said: It is permissible for him and for them.

قلت: أرأيت إن هو خرج إلى بعض لبلدان، فطلق واحدة من الاربع، وأشهد على طلاقها قوما من أهل تلك البلاد، وهم لايعرفون المرأة، ثمّ تزوّج امرأة من أهل تلك البلاد بعد انقضاء عدة المطلّقة، ثمّ مات بعدما دخل بها، كيف يقسم ميراثه؟

I said: What do you think if he goes out to some of the lands and divorces one of the four, and has people from the people of that land witness her divorce, and they do not know the woman, then he marries a woman from the people of that land after the completion of the divorced woman's waiting period, then he dies after consummating with her - how should his inheritance be divided?

قال: إن كان له ولد، فان للمرأة التي تزوجها أخيرا من أهل تلك البلاد ربع ثمّن ما ترك، وإن عرفت التي طلقت من الاربع بعينها ونسبها فلا شيء لها من الميراث، وعليها العدة، قال: ويقتسمن الثلاثة النسوة ثلاثة أرباع ثمّن ماترك وعليهن العدة، وإن لم تعرف التي طلقت من الاربع، قسمن النسوة ثلاثة أرباع ثمّن ما ترك بينهن جميعا، وعليهن جميعا العدة.

He said: If he had a child, then the woman he married last from the people of that land gets one-quarter of one-eighth of what he left. If the one who was divorced from the four is known by her identity and lineage, then she gets nothing from the inheritance, and she must observe the waiting period. He said: The three women divide three-quarters of one-eighth of what he left among them, and they must observe the waiting period. If the one who was divorced from the four is not known, then the women divide three-quarters of one-eighth of what he left among all of them, and all of them must observe the waiting period.

أقول: وتقدم ما يدل على ذلك بعمومه وإطلاقه، بل بالنص على حصر شرائط الطلاق والحكم بوقوعه عند اجتماعها، ويأتي ما يدل عليه.

I (Hurr Amili) say: What has preceded indicates this by its generality and absoluteness, rather by the text limiting the conditions of divorce and ruling on its occurrence when they are gathered together, and what indicates this will come.

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Hadith 28000

عن حمران، عن أبي عبدالله (عليه السلام)، قال: لا يكون خلع ولا تخيير ولا مباراة إلا على طهر من المرأة من غير جماع، وشاهدين يعرفان الرجل، ويريان المرأة، ويحضران التخيير، وإقرار المرأة أنها على طهر من غير جماع يوم خيّرها.

From Hamran, from Abu Abdullah (peace be upon him), he said: There is no khul' (divorce initiated by wife), takhyir (giving the wife choice), or mubarat (mutual divorce) except during the woman's state of purity without sexual intercourse, and with two witnesses who know the man and see the woman and witness the takhyir, and the woman's acknowledgment that she is in a state of purity without sexual intercourse on the day he gave her the choice.

قال: فقال له محمّد بن مسلم: ما إقرار المرأة ههنا، قال: (يشهد الشاهدان) عليها بذلك للرجل (حذار أن يأتي بعد، فيدّعي) أنه خيرها وهي طامث فيشهدان عليها بما سمعا منها. الحديث.

He said: Muhammad ibn Muslim said to him: What is the woman's acknowledgment here? He said: The two witnesses testify about that for the man as a precaution lest he come later and claim that he gave her the choice while she was menstruating, so they testify about her regarding what they heard from her.

أقول: هذا محمول إما على الاستحباب والاحتياط ليمكن الاثبات عند الانكار، بل هو ظاهر في ذلك على أنه مخصوص بالخلع والمباراة، إذ الطلاق غير مذكور فيه أصلاً، وإما على أن إقامة الشهادة وإثبات الخلع والمباراة موقوفان على المعرفة بالزوجين، وإن حصلت بعد الاشهاد، وإن كان صحة الطلاق والخلع والمباراة غير موقوفة على معرفة الشاهدين بالزوجين، وحكم التخيير فيه محمول على التقيّة، كما مضى , ويأتي.

I (Hurr Amili) say: This is interpreted either as recommended and precautionary so that proof can be established when there is denial - rather this is apparent in that - given that it is specific to khul' and mubarat, since divorce is not mentioned in it at all. Or it means that establishing testimony and proving khul' and mubarat depend on knowing the spouses, even if this occurs after the witnessing, even though the validity of divorce, khul', and mubarat does not depend on the witnesses' knowledge of the spouses. The ruling on takhyir in it is interpreted as taqiyyah, as has passed and will come.

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CHAPTER 24

When An Absent Person Returns And Divorces, The Divorce Does Not Take Effect Until He Knows That She Is Pure From A Purity In Which He Did Not Have Intercourse With Her

[Hadith 28001 to 28002]

Hadith 28001

عن معاوية بن عمار، عن أبي عبدالله (عليه السلام)، قال: إذا غاب الرجل عن امرأته سنة أو سنتين أو أكثر، ثمّ قدم وأراد طلاقها، وكانت حائضا تركها حتى تطهر، ثمّ يطلقها.

From Muawiya ibn Ammar, from Abu Abdullah (peace be upon him), who said: When a man is absent from his wife for a year or two years or more, then returns and wants to divorce her, and she is menstruating, he should leave her until she becomes pure, then divorce her.

Hadith 28002

عن حجاج الخشّاب، قال سألت أبا عبدالله (عليه السلام) عن رجل كان في سفر، فلمّا دخل المصر جاء معه بشاهدين، فلمّا استقبلته امرأته على الباب أشهدهما على طلاقها، قال: لا يقع بها طلاق.

From Hajjaj al-Khashshab, who said: I asked Abu Abdullah (peace be upon him) about a man who was traveling, and when he entered the city he came with two witnesses. When his wife met him at the door, he called them to witness her divorce. He said: No divorce takes effect upon her.

أقول: هذا محمول على كونها حائضاً، أو في طهر جامعها فيه، ذكره الشيخ، وقد تقدم ما يدل على ذلك، ويأتي ما يدل عليه، والحديث الأوّل قرينة على ما قلناه، ويحتمل الحمل على الانكار وعلى الكراهة.

I (Hurr Amili) say: This is interpreted as her being menstruating, or in a state of purity in which he had intercourse with her, as mentioned by the Shaykh. What has preceded indicates this, and what will come indicates it. The first hadith is evidence for what we have said. It is possible to interpret this as referring to denial or to dislike.

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CHAPTER 25

Permissibility Of Divorcing The Wife Of An Absent Husband, A Minor Wife, One Who Has Not Been Consummated With, A Pregnant Woman, And A Post-Menopausal Woman Under All Circumstances, Even If During Menstruation Or In A State Of Purity After Intercourse

[Hadith 28003 to 28007]

Hadith 28003

عن إسماعيل بن جابر الجعفي، عن أبي جعفر (عليه السلام)، قال: خمس يطلقن على كل حال: الحامل المتبين حملها، والتي لم يدخل بها زوجها، والغائب عنها زوجها، والتي لم تحض، والتي قد جلست عن المحيض.

From Isma'il ibn Jabir al-Ju'fi, from Abu Ja'far (peace be upon him), who said: Five types of women may be divorced under all circumstances: the pregnant woman whose pregnancy is clearly apparent, she who has not been consummated with by her husband, she whose husband is absent from her, she who has not yet menstruated, and she who has ceased menstruating.

Hadith 28004

قال الصدوق: وفي خبر آخر: والتي قد يئست من المحيض.

As-Saduq said: And in another report: "And she who has despaired of menstruation."

عن ابن أبي عمير، عن جميل نحوه، إلاّ أنّه أسقط لفظ المتبين حملها.

From Ibn Abi Umayr, from Jamil, similarly, except that he omitted the phrase "whose pregnancy has become apparent."

Hadith 28005

عن الحلبيّ، عن أبي عبدالله (عليه السلام)، قال: لا بأس بطلاق خمس على كل حال: الغائب عنها زوجها، والتي لم تحض، والتي لم يدخل بها زوجها، والحبلى، والتي قد يئست من المحيض.

From al-Halabi, from Abu Abdullah (peace be upon him), who said: There is no harm in divorcing five types of women under any circumstances: she whose husband is absent from her, she who has not menstruated, she whom her husband has not consummated the marriage with, the pregnant woman, and she who has despaired of menstruation.

Hadith 28006

وزرارة وغيرهما، عن أبي جعفر، وأبي عبدالله (عليهما السلام)، قال: خمس يطلقهن أزواجهن متى شاؤوا: الحامل المستبين حملها، والجارية التي لم تحض، والمرأة التي قد قعدت من المحيض، والغائب عنها زوجها، والتي لم يدخل بها.

And Zurarah and others, from Abu Ja'far and Abu Abdullah (peace be upon both of them), who

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said: Five types of women may be divorced by their husbands whenever they wish: the pregnant woman whose pregnancy is evident, the young girl who has not menstruated, the woman who has ceased menstruating, she whose husband is absent from her, and she whom he has not consummated the marriage with.

Hadith 28007

عن حماد بن عثمان، عن أبي عبدالله (عليه السلام)، قال: خمس يطلقن على كل حال: الحامل، والتي قد يئست من المحيض، والتي لم يدخل بها، والغائب عنها زوجها، والتي لم تبلغ المحيض.

From Hammad ibn Uthman, from Abu Abdullah (peace be upon him), who said: Five types of women may be divorced under any circumstances: the pregnant woman, she who has despaired of menstruation, she whom he has not consummated the marriage with, she whose husband is absent from her, and she who has not reached the age of menstruation.

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CHAPTER 26

Permissibility For An Absent Husband To Divorce His Wife After A Month, As Long As He Does Not Know At That Time Whether She Is In A State Of Purity After Intercourse Or In Menstruation, Except What Is Exempted, And If He Avoids That

[Hadith 28008 to 28015]

Hadith 28008

عن محمّد بن مسلم، عن أحدهما (عليهما السلام)، قال: سألته عن الرجل يطلق امرأته، وهو غائب، قال: يجوز طلاقه على كل حال، وتعتد امرأته من يوم طلقها.

From Muhammad ibn Muslim, from one of the two (peace be upon them), he said: I asked him about a man who divorces his wife while he is absent. He said: His divorce is valid in all circumstances, and his wife observes her waiting period from the day he divorced her.

Hadith 28009

عن زرارة عن بكير، قال: اشهد على أبي جعفر (عليه السلام) أني سمعته يقول: الغائب يطلق بالاهلة والشهور.

From Zurarah from Bukayr, he said: I bear witness regarding Abu Ja'far (peace be upon him) that I heard him say: The absent husband divorces according to the new moons and months.

Hadith 28010

عن إسحاق بن عمار، عن أبي عبدالله (عليه السلام) قال: الغائب إذا أراد أن يطلقها تركها شهرا.

From Ishaq ibn Ammar, from Abu Abdullah (peace be upon him) who said: When the absent one wants to divorce her, he should leave her for a month.

Hadith 28011

عن محمّد بن الحسن الاشعريّ، قال: كتب بعض موالينا إلى أبي جعفر (عليه السلام) معي: إن امرأة عارفة أحدث زوجها فهرب من البلاد فتبع الزوج بعض أهل المرأة فقال: إما طلقت، وإما رددتك فطلقها، ومضى الرجل على وجهه فما ترى للمرأة؟ فكتب بخطه: تزوجي يرحمك الله.

From Muhammad ibn al-Hasan al-Ash'ari, who said: One of our supporters wrote to Abu Ja'far (peace be upon him) with me: A knowledgeable woman's husband committed an offense and fled from the lands. Some of the woman's family followed the husband and said: Either you divorce her or we will bring you back. So he divorced her, and the man continued on his way. What do you see for the woman? He wrote in his own handwriting: Get married, may Allah have mercy on you.

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Hadith 28012

عن ابن سماعة قال: سألت محمّد بن أبي حمزة متى يطلق الغائب؟ فقال: حدثني إسحاق بن عمار، أو روى إسحاق بن عمار، عن أبي عبدالله (عليه السلام)، أو أبي الحسن (عليه السلام) قال: إذا مضى له شهر.

From Ibn Sama'ah who said: I asked Muhammad ibn Abi Hamzah when does the absent one divorce? He said: Ishaq ibn Ammar narrated to me, or Ishaq ibn Ammar reported from Abu Abdullah (peace be upon him) or Abu al-Hasan (peace be upon him) who said: When a month has passed for him.

Hadith 28013

عن أبي بصير قال: قلت لابي عبدالله (عليه السلام): الرجل يطلق امرأته وهو غائب فيعلم أنه يوم طلقها كانت طامثا، قال: يجوز.

From Abu Basir who said: I said to Abu Abdullah (peace be upon him): A man divorces his wife while he is absent and knows that on the day he divorced her she was menstruating. He said: It is permissible.

Hadith 28014

عن جميل بن دراج، عن أبي عبدالله (عليه السلام)، قال: الرجل إذا خرج من منزله إلى السفر فليس له أن يطلق حتى تمضي ثلاثة أشهر.

From Jamil ibn Darraj, from Abu Abdullah (peace be upon him), who said: When a man leaves his house for travel, he should not divorce until three months have passed.

Hadith 28015

عن إسحاق بن عمّار، قال: قلت لابي إبراهيم (عليه السلام): الغائب الذي يطلق أهله كم غيبته؟ قال: خمسة أشهر، ستّة أشهر، قال: حد دون ذا، قال: ثلاثة أشهر.

From Ishaq ibn Ammar who said: I said to Abu Ibrahim (peace be upon him): The absent one who divorces his family - how long is his absence? He said: Five months, six months. He said: There is a limit below that. He said: Three months.

أقول: حمله الشيخ على من لا تحيض إلا في كل ثلاثة أشهر أو خمسة أو ستة لما تقدم، ويجوز حمله على الاستحباب والاستظهار كما يفهم من الصدوق ألا ترى أنه اعتبر أولا ستة أشهر فلما راجعه اكتفى بثلاثة أشهر ولعله لو راجعه ثانيا اكتفى بشهر، وقد تقدم حديث أن لكل شهر حيضة، وتقدم أيضا ما يدل على المقصود، ويأتي ما يدل عليه.

I (Hurr Amili) say: The Shaykh interpreted this as referring to one who menstruates only every three months or five or six months based on what was mentioned previously. It is also possible to interpret it as referring to recommendation and precaution as understood from al-Saduq. Do you not see that he first considered six months, then when consulted again, he was satisfied with three months? Perhaps if he had been consulted a second time, he would have been satisfied with one month. The hadith has already been mentioned that every month has a menstruation, and what

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indicates the intended meaning has also been mentioned previously, and what indicates it will come.

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CHAPTER 27

Permissibility Of Divorcing A Pregnant Woman Absolutely

[Hadith 28016 to 28019]

Hadith 28016

عن أبي بصير، يعني: المراديّ، قال: قال أبو عبدالله (عليه السلام): طلاق الحبلى واحدة، وأجلها أن تضع حملها، وهو أقرب الاجلين.

From Abu Basir, meaning al-Muradi, he said: Abu Abdullah (peace be upon him) said: The divorce of a pregnant woman is one divorce, and her waiting period is until she gives birth to her child, and this is the nearest of the two waiting periods.

Hadith 28017

عن أبي بصير، عن أبي عبدالله (عليه السلام)، قال: الحبلى تطلق تطليقة واحدة.

From Abu Basir, from Abu Abdullah (peace be upon him), he said: The pregnant woman is divorced with one divorce.

Hadith 28018

عن الحلبي، عن أبي عبدالله (عليه السلام) قال: لا بأس بطلاق خمس على كل حال ـ وعد منهن الحبلى ـ.

From al-Halabi, from Abu Abdullah (peace be upon him) who said: There is no problem with divorcing five types of women under any circumstances - and he counted among them the pregnant woman.

Hadith 28019

وبالإسناد، عن أبي عبدالله (عليه السلام)، قال: طلاق الحبلى واحدة وأجلها أن تضع حملها، وهو أقرب الاجلين.

And with the same chain of narration, from Abu Abdullah (peace be upon him), who said: The divorce of a pregnant woman counts as one divorce, and her waiting period is until she gives birth to her child, and this is the nearer of the two waiting periods.

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CHAPTER 28

That When A Present Husband Cannot Ascertain The Condition Of His Wife Regarding Menstruation And Purity, His Ruling Is Like That Of An Absent Husband, And It Is Permissible For Him To Divorce Her After The Passage Of A Month

[Hadith 28020 to 28021]

Hadith 28020

عن عبد الرحمن بن الحجّاج، قال: سألت أبا الحسن (عليه السلام) عن رجل تزوج امرأة سرا من أهلها، وهي في منزل أهلها، وقد أراد أن يطلقها، وليس يصل إليها فيعلم طمثها إذا طمثت، ولا يعلم بطهرها إذا طهرت، قال: فقال: هذا مثل الغائب عن أهله، يطلّق بالاهلة الشهور.

From Abd al-Rahman ibn al-Hajjaj, who said: I asked Abu al-Hasan (peace be upon him) about a man who married a woman secretly from her family, while she is in her family's house, and he wants to divorce her, but he cannot reach her to know her menstruation when she menstruates, nor does he know of her purity when she becomes pure. He said: This is like one who is absent from his family - he divorces by the crescents of the months.

قلت: أرأيت إن كان يصل إليها الاحيان والاحيان لايصل إليها، فيعلم حالها كيف يطلقها؟

I said: What if he can reach her sometimes but sometimes cannot reach her, so he knows her condition - how should he divorce her?

قال: إذا مضى له شهر لا يصل إليها فيه، يطلقها إذا نظر إلى غرة الشهر الآخر بشهود، ويكتب الشهر الذي يطلقها فيه، ويشهد على طلاقها رجلين، فاذا مضى ثلاثة أشهر فقد بانت منه وهو خاطب من الخطّاب، وعليه نفقتها في تلك الثلاثة الاشهر التي تعتد فيها.

He said: When a month passes in which he cannot reach her, he divorces her when he looks at the beginning of the next month with witnesses, and he writes down the month in which he divorces her, and he has two men witness his divorce of her. When three months pass, she has become separated from him and he is a suitor among suitors, and he owes her maintenance during those three months in which she observes her waiting period.

Hadith 28021

عن الحسن بن علي بن كيسان، قال: كتبت إلى الرجل عليه السلام أسأله عن رجل له امرأة من نساء هؤلاء العامّة، وأراد أن يطلّقها، وقد كتمت حيضها وطهرها مخافة الطلاق، فكتب (عليه السلام): يعتزلها ثلاثة أشهر، (ثمّ يطلقها).

From al-Hasan ibn Ali ibn Kaysan, who said: I wrote to the man (peace be upon him) asking him about a man who has a wife from among these common women, and he wants to divorce her, but

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she has concealed her menstruation and purity out of fear of divorce. So he wrote (peace be upon him): Let him separate from her for three months, then divorce her.

أقول: هذا محمول إما على الاستحباب والاستظهار، وإمّا على من تحيض في كل ثلاثة أشهر مرّة، لما مرّ، والله أعلم.

I (Hurr Amili) say: This is to be understood either as being recommended and precautionary, or as applying to one who menstruates once every three months, as previously mentioned, and Allah knows best.

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CHAPTER 29

The Ruling That If Someone Divorces Twice, Thrice, Or More Times Consecutively Without Taking Back (The Wife), Only One Divorce Occurs With The Proper Conditions, And The Rest Are Invalid

[Hadith 28022 to 28051]

Hadith 28022

وعمر بن حنظلة عن أبي عبدالله (عليه السلام)، قال: الطلاق ثلاثا في غير عدّة، إن كانت على طهر فواحدة، وإن لم تكن على طهر فليس بشيء.

From Umar ibn Hanzala, from Abu Abdullah (peace be upon him), who said: Divorce thrice outside the waiting period (iddah) - if it was during a state of purity, then it is one (divorce), and if it was not during a state of purity, then it is nothing.

Hadith 28023

عن زرارة، عن أحدهما (عليهما السلام)، قال: سألته عن رجل طلق امرأته ثلاثا في مجلس واحد، وهي طاهر؟ قال: هي واحدة.

From Zurarah, from one of them (peace be upon them both), he said: I asked him about a man who divorced his wife thrice in one sitting while she was in a state of purity. He said: It is one (divorce).

Hadith 28024

عن زرارة، عن أحدهما (عليهما السلام)، قال: سألته عن الذي يطلق في حال طهر في مجلس ثلاثا؟ قال: هي واحدة.

From Zurarah, from one of the two (peace be upon them both), he said: I asked him about one who divorces during a state of purity in one sitting three times? He said: It is one.

Hadith 28025

عن شهاب بن عبد ربه، عن أبي عبدالله (عليه السلام) ـ في حديث ـ قال: قلت: فطلقها ثلاثا في مقعد، قال: ترد إلى السنة فإذا مضت ثلاثة أشهر أو ثلاثة قروء، فقد بانت منه بواحدة.

From Shihab ibn Abd Rabbih, from Abu Abdullah (peace be upon him) - in a hadith - he said: I said: So he divorces her three times in one sitting. He said: It is returned to the Sunnah, so when three months or three menstrual periods have passed, she becomes separated from him by one.

Hadith 28026

عن سماعة بن مهران، عن الكلبي النسابة، عن الصادق (عليه السلام) ـ في حديث ـ قال: قلت له رجل قال لامرأته: أنت طالق عدد نجوم السماء، فقال: ويحك أما تقرأ سورة الطلاق؟ قلت: بلى، قال: فاقرأ فقرأت (فطلقوهن لعدتهن وأحصوا العدة)، فقال أترى ههنا نجوم السماء؟ قلت: لا،

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From Sama'a ibn Mihran, from al-Kalbi the genealogist, from al-Sadiq (peace be upon him) - in a hadith - he said: I said to him: A man said to his wife: You are divorced the number of stars in the sky. He said: Woe to you! Do you not read Surat al-Talaq? I said: Yes. He said: Then read it. So I read: "Divorce them for their waiting period and count the waiting period [Quran, 65:1]." He said: Do you see the stars of the sky here? I said: No.

فقلت: فرجل قال لامرأته: أنت طالق ثلاثاً، فقال: ترد إلى كتاب الله وسنة نبيه، ثمّ قال: لا طلاق إلا على طهر من غير جماع بشاهدين مقبولين.

Then I said: A man said to his wife: You are divorced three times. He said: It is returned to the Book of Allah and the Sunnah of His Prophet. Then he said: There is no divorce except during purity without intercourse with two acceptable witnesses.

Hadith 28027

عن علي بن سويد، عن أبي الحسن موسى (عليه السلام) ـ في حديث ـ أنه كتب إليه يسأله عن مسائل كثيرة فأجابه بجواب، هذه نسخته: بسم الله الرحمن الرحيم ـ إلى أن قال: ـ وسألت عن امهات أولادهم، وعن نكاحهم، وعن طلاقهم فأما امهات أولادهم فهن عواهر إلى يوم القيامة نكاح بغير وليّ، وطلاق في غير عدة فأما من دخل في دعوتنا فقد هدم إيمانه ضلاله، ويقينه شكه.

From Ali ibn Suwaid, from Abu al-Hasan Musa (peace be upon him) - in a hadith - that he wrote to him asking about many issues, and he answered him with a response, this is its copy: In the name of Allah, the Most Gracious, the Most Merciful - until he said: - And you asked about the mothers of their children, and about their marriage, and about their divorce. As for the mothers of their children, they are adulteresses until the Day of Judgment - marriage without a guardian, and divorce not during the waiting period. As for whoever enters into our call, his faith has demolished his misguidance, and his certainty has demolished his doubt.

Hadith 28028

عن عمرو بن البراء، قال: قلت لابي عبدالله (عليه السلام): إنّ أصحابنا يقولون: إن الرجل إذا طلق امرأته مرة أو مائة مرة فإنما هي واحدة، وقد كان يبلغنا عنك وعن آبائك أنهم كانوا يقولون: إذا طلق مرة أو مائة مرة فانما هي واحدة، فقال: هو كما بلغكم.

From Amr ibn al-Bara', he said: I said to Abu Abdullah (peace be upon him): Our companions say that if a man divorces his wife once or a hundred times, it is only one divorce, and it used to reach us from you and your fathers that they would say: If he divorces once or a hundred times, it is only one divorce. He said: It is as has reached you.

Hadith 28029

عن أبي بصير، عن أبي عبدالله (عليه السلام)، قال: من طلق ثلاثا في مجلس فليس بشيء، من خالف كتاب الله عزّ وجلّ رد إلى كتاب الله عزّ وجلّ. وذكر طلاق ابن عمر.

From Abu Basir, from Abu Abdullah (peace be upon him), he said: Whoever divorces three times in one sitting, it is nothing. Whoever contradicts the Book of Allah, the Mighty and Majestic, is

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returned to the Book of Allah, the Mighty and Majestic. And he mentioned the divorce of Ibn Umar.

أقول: تقدم ما يدل على أن طلاق ابن عمر كان في الحيض. ويأتي ما يدل عليه، ويجوز حمله على أنه ليس بشيء في وقوع الثلاث، بل تقع واحدة قاله الشيخ.

I (Hurr Amili) say: What has preceded indicates that the divorce of Ibn Umar was during menstruation. And what will come indicates this, and it is permissible to interpret it as meaning it is nothing regarding the occurrence of the three divorces, but only one divorce occurs, as the Shaykh said.

Hadith 28030

عن الحلبي، عن أبي عبدالله (عليه السلام)، قال: من طلق امرأته ثلاثا في مجلس وهي حائض فليس بشيء، وقد رد رسول الله (صلى الله عليه وآله) طلاق (ابن عمر)، إذ طلق امرأته ثلاثا وهي حائض، فأبطل رسول الله (صلى الله عليه وآله) ذلك الطلاق، وقال: كل شيء خالف كتاب الله والسنة رد إلى كتاب الله وقال: لا طلاق إلا في عدة.

From al-Halabi, from Abu Abdullah (peace be upon him), who said: Whoever divorces his wife three times in one sitting while she is menstruating, it is nothing. The Messenger of Allah (peace be upon him and his family) rejected the divorce of Ibn Umar when he divorced his wife three times while she was menstruating. The Messenger of Allah (peace be upon him and his family) nullified that divorce and said: Everything that contradicts the Book of Allah and the Sunnah is rejected in favor of the Book of Allah. And he said: There is no divorce except during the waiting period.

Hadith 28031

عن سماعة بن مهران، قال: سألته عن رجل طلق امرأته ثلاثا في مجلس واحد، فقال: إنّ رسول الله (صلى الله عليه واله) رد على عبدالله ابن عمر امرأته، طلّقها ثلاثاً وهي حائض فأبطل رسول الله (صلى الله عليه وآله) ذلك الطلاق وقال: كل شيء خالف كتاب الله والسنة رد إلى كتاب الله والسنة.

From Sama'a ibn Mihran, who said: I asked him about a man who divorced his wife three times in one sitting. He said: The Messenger of Allah (peace be upon him and his family) returned to Abdullah ibn Umar his wife - he had divorced her three times while she was menstruating. The Messenger of Allah (peace be upon him and his family) nullified that divorce and said: Everything that contradicts the Book of Allah and the Sunnah is rejected in favor of the Book of Allah and the Sunnah.

Hadith 28032

عن زرارة، عن أحدهما (عليهما السلام) في التي تطلق في حال طهر في مجلس ثلاثا، قال: هي واحدة.

From Zurarah, from one of them (peace be upon them both) regarding the woman who is divorced during a state of purity three times in one sitting. He said: It counts as one.

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Hadith 28033

عن بكير بن أعين، عن أبي جعفر (عليه السلام) قال: إن طلقها للعدة أكثر من واحدة، فليس الفضل على الواحدة بطلاق.

From Bukayr ibn A'yan, from Abu Ja'far (peace be upon him) who said: If he divorces her for the waiting period more than once, then what is beyond the single divorce is not a divorce.

Hadith 28034

عن الحسن عن أبي محمّد الوابشي، عن أبي عبدالله (عليه السلام) في رجل ولىّ امر امرأته رجلاً، وأمره أن يطلقها على السنّة، فطلّقها ثلاثا في مقعد واحد قال: يرد إلى السنة فإذا مضت ثلاثة أشهر أو ثلاثة قروء فقد بانت بواحدة.

From al-Hasan from Abu Muhammad al-Wabishi, from Abu Abdullah (peace be upon him) regarding a man who delegated authority over his wife to another man and ordered him to divorce her according to the Sunnah, but he divorced her three times in one sitting. He said: It should be returned to the Sunnah, so when three months or three menstrual cycles have passed, she is separated by one divorce.

Hadith 28035

عن محمّد بن (سعيد الاموي)، قال: سألت أبا عبدالله (عليه السلام) عن رجل طلق ثلاثا في مقعد واحد؟ قال: فقال: أما أنا فأراه قد لزمه، وأما أبي فكان يرى ذلك واحدة

From Muhammad ibn Sa'id al-Umawi, he said: I asked Abu Abdullah (peace be upon him) about a man who divorced three times in one sitting. He said: As for me, I see that it is binding upon him, but as for my father, he used to view that as one divorce.

. أقول: صدر الحديث محمول على التقيّة، أو على من يعتقد ذلك لما مضى، ويأتي.

I (Hurr Amili) say: The beginning of the hadith is understood as being based on taqiyyah, or regarding one who believes that, based on what has passed and what is to come.

Hadith 28036

عن إسحاق بن عمار الصيرفي، عن جعفر، عن أبيه، إن عليا (عليه السلام) كان يقول: إذا طلق الرجل المرأة قبل أن يدخل بها ثلاثا في كلمة واحدة، فقد بانت منه، ولا ميراث بينهما، ولا رجعة، ولا تحل له حتى تنكح زوجا غيره ، وإن قال: هي طالق، هي طالق، هي طالق، فقد بانت منه بالأوّلى، وهو خاطب من الخطّاب، إن شاءت نكحته نكاحا جديدا، وإن شاءت لم تفعل.

From Ishaq ibn Ammar al-Sayrafi, from Ja'far, from his father, that Ali (peace be upon him) used to say: If a man divorces a woman before consummating the marriage three times in one utterance, she becomes irrevocably separated from him, there is no inheritance between them, no return, and she is not lawful for him until she marries another husband. But if he says: She is divorced, she is divorced, she is divorced, then she becomes separated from him with the first utterance, and he is one of the suitors among suitors - if she wishes, she may marry him with a new marriage contract, and if she wishes, she may not do so.

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أقول: حمله الشيخ على التقية، ويحتمل ما تقدم.

I (Hurr Amili) say: The Shaykh interpreted this as taqiyyah, and it may be interpreted as previously mentioned.

Hadith 28037

عن أبي أيوب الخرّاز، عن أبي عبدالله (عليه السلام)، قال: كنت عنده، فجاء رجل، فسأله عن رجل طلق امرأته ثلاثا، قال: بانت منه، قال: فذهب، ثمّ جاء رجل آخر من أصحابنا، فقال: رجل طلق امرأته ثلاثا، فقال: تطليقة، وجاء آخر، فقال: رجل طلق امرأته ثلاثا، فقال: ليس بشيء،

From Abu Ayyub al-Kharraz, from Abu Abdullah (peace be upon him), he said: I was with him when a man came and asked him about a man who divorced his wife three times. He said: She is irrevocably separated from him. The man then left, then another man from our companions came and said: A man divorced his wife three times. He said: It is one divorce. Then another came and said: A man divorced his wife three times. He said: It is nothing.

ثمّ نظر إليّ، فقال: هو ماترى، قال: قلت: كيف هذا؟ قال: هذا يرى أن من طلق امرأته ثلاثا حرمت عليه، وأنا أرى أن من طلق امرأته ثلاثا على السنة فقد بانت منه، ورجل طلق امرأته ثلاثاً، وهي على طهر فإنما هي واحدة، ورجل طلق امرأته ثلاثا على غير طهر فليس بشيء.

Then he looked at me and said: It is as you see. I said: How is this? He said: This one believes that whoever divorces his wife three times, she becomes forbidden to him, and I believe that whoever divorces his wife three times according to the Sunna, she becomes irrevocably separated from him. A man who divorces his wife three times while she is in a state of purity - it is only one divorce. And a man who divorces his wife three times while she is not in a state of purity - it is nothing.

Hadith 28038

عن الحسن بن زياد الصيقل، قال: قال أبو عبدالله (عليه السلام): لا تشهد لمن طلق ثلاثا في مجلس واحد.

From al-Hasan ibn Ziyad al-Saiqal, he said: Abu Abdullah (peace be upon him) said: Do not bear witness for one who divorces three times in a single sitting.

أقول: حمله الشيخ على وقوعه في حال الحيض، أو حال السكر، أو حال الاكراه، ويمكن حمله على أنه لا يجوز أن يشهد بالثلاث، بل يشهد بواحدة ؛ لبطلان الثنتين، أو لا يجوز حضور ذلك الطلاق، وسماع صيغته ؛ لعدم مشروعيته.

I (Hurr Amili) say: The Shaykh interpreted this as occurring during menstruation, or while intoxicated, or under coercion. It can also be interpreted as meaning that one should not witness the three divorces, but rather witness one divorce due to the invalidity of the other two, or that it is not permissible to attend such a divorce and hear its formula due to its lack of legitimacy.

Hadith 28039

عن إسماعيل بن عبد الخالق، قال: سمعت أبا الحسن (عليه السلام) وهو يقول: طلق عبدالله بن عمر امرأته ثلاثا، فجعلها رسول الله (صلى الله عليه وآله) واحدة، فردّها إلى الكتاب والسنة.

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From Isma'il ibn Abd al-Khaliq, he said: I heard Abu al-Hasan (peace be upon him) saying: Abdullah ibn Umar divorced his wife three times, so the Messenger of Allah (peace be upon him and his family) made it count as one, thus returning her to the Book and the Sunnah.

أقول: هذا محمول على كونه طلقها في طهر لم يجامعها فيه ولا ينافي ما تقدم لاحتمال كونه طلقها مرّتين، مرّة في الحيض، وكان طلاقها باطلاً، ومرّة في الطهر، فوقعت واحدة، ويحتمل التقية في الرواية : لما مرّ.

I (Hurr Amili) say: This is interpreted as him having divorced her during a period of purity in which he had not had intercourse with her, and this does not contradict what preceded, due to the possibility that he divorced her twice - once during menstruation, and that divorce was invalid, and once during purity, so one divorce took effect. It is also possible that this narration involves taqiyyah for the reason mentioned earlier.

Hadith 28040

عن عليّ بن إسماعيل، قال: كتب عبدالله بن محمّد إلى أبي الحسن (عليه السلام) روى أصحابنا، عن أبي عبدالله (عليه السلام) في الرجل يطلق امرأته ثلاثا بكلمة واحدة على طهر بغير جماع بشاهدين أنه يلزمه تطليقة واحدة، فوقع بخطّه: أخطأ على أبي عبدالله (عليه السلام) إنّه لا يلزم الطلاق، ويرد إلى الكتاب والسنة إن شاء الله.

From Ali ibn Isma'il, he said: Abdullah ibn Muhammad wrote to Abu al-Hasan (peace be upon him): Our companions narrated from Abu Abdullah (peace be upon him) regarding a man who divorces his wife three times with one statement during purity without intercourse in the presence of two witnesses, that only one divorce is binding upon him. So he wrote in his handwriting: He erred regarding Abu Abdullah (peace be upon him). The divorce is not binding, and she should be returned to the Book and the Sunnah, God willing.

أقول: حمله الشيخ على من كان سكران، أو مكرها، أو غير مريد، ويمكن حمله على التقية، ويكون قوله: إنه لا يلزم الطلاق بيانا للخطأ، والمراد: الطلاق الثاني والثالث، يعني: لا تقع واحدة، بل تقع ثلاث، فأفتى بذلك للتقية، ويحتمل الحمل على من يعتقد ذلك : لما مضى ويأتي.

I (Hurr Amili) say: The Shaykh interpreted this as referring to someone who was drunk, or coerced, or not intending it. It can also be interpreted as involving taqiyyah, and his statement "the divorce is not binding" would be an explanation of the error, meaning the second and third divorces - that is, not one divorce occurs, but three occur. So he gave this ruling due to taqiyyah. It can also be interpreted as applying to one who believes this, for the reasons that have passed and will come.

Hadith 28041

عن عمرابن حنظلة، عن أبي عبدالله (عليه السلام)، قال: إياكم والمطلقات ثلاثا في مجلس واحد، فانهنّ ذوات أزواج.

From Umar ibn Hanzalah, from Abu Abdullah (peace be upon him), he said: Beware of women divorced three times in one sitting, for they are wives of husbands.

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Hadith 28042

عن حفص بن البختري، عن أبي عبدالله (عليه السلام)، قال: إياكم والمطلقات ثلاثاً، فانهن ذوات أزواج.

From Hafs ibn al-Bukhtari, from Abu Abdullah (peace be upon him), he said: Beware of women who have been divorced three times, for they are women with husbands.

أقول: تقدم أن مثله محمول على وقوعه في الحيض ونحوه، وقرينته أن الطلاق ثلاثا في مجلس من شعار العامة وهم لا يشترطون الطهر، وقد حمله الشيخ على ما تقدّم، وجوز حمله على كون الطلاق معلقا على شرط : لما مر أيضا.

I (Hurr Amili) say: It has been mentioned previously that the like of this is interpreted as occurring during menstruation and similar circumstances, and its indication is that divorcing three times in one sitting is a practice of the common people (Sunnis) and they do not require ritual purity. The Shaykh has interpreted it according to what was mentioned previously, and he permitted interpreting it as the divorce being conditional upon a condition, for what was also mentioned previously.

Hadith 28043

عن علي بن أبي حمزة، قال: قال أبو عبدالله (عليه السلام): لا طلاق إلا على السنّة، إنّ عبدالله ابن عمر طلق ثلاثا في مجلس، وامرأته حائض، فردّ رسول الله (صلى الله عليه وآله) طلاقه، وقال: ماخالف كتاب الله رد إلى كتاب الله.

From Ali ibn Abi Hamza, who said: Abu Abdullah (peace be upon him) said: There is no divorce except according to the Sunnah. Indeed, Abdullah ibn Umar divorced three times in one sitting while his wife was menstruating, so the Messenger of Allah (peace be upon him and his family) rejected his divorce and said: Whatever contradicts the Book of Allah is rejected in favor of the Book of Allah.

Hadith 28044

عن بكير بن أعين، عن أبي جعفر (عليه السلام) قال: سمعته يقول إذا طلق الرجل امرأته، وأشهد شاهدين عدلين في قبل عدتها فليس له أن يطلقها بعد ذلك حتى تنقضي عدتها أو يراجعها.

From Bukayr ibn A'yan, from Abu Ja'far (peace be upon him), who said: I heard him saying: When a man divorces his wife and has two just witnesses testify during her waiting period, he has no right to divorce her after that until her waiting period ends or he takes her back.

Hadith 28045

عن الفضل بن شاذان، عن الرضا (عليه السلام) في كتابه إلى المأمون، قال: وإذا طلقت المرأة (بعد العدة) ثلاث مرات، لم تحلّ لزوجها حتى تنكح زوجا غيره. قال: وقال أمير المؤمنين (عليه السلام): اتقوا تزويج المطلقات ثلاثا في موضع واحد، فانّهنّ ذوات أزواج.

From al-Fadl ibn Shadhan, from al-Rida (peace be upon him) in his letter to al-Ma'mun, he said: When a woman is divorced (after the waiting period) three times, she does not become lawful for her husband until she marries another husband. He said: And Amir al-Muminin (peace be upon him) said: Beware of marrying women who have been divorced three times in one sitting, for they

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are still married women.

Hadith 28046

عن صفوان الجمال، عن أبي عبدالله (عليه السلام)، انّ رجلا قال له: إني طلقت امرأتي ثلاثا في مجلس، قال: ليس بشيء، ثمّ قال: أما تقرأ كتاب الله: (يا أيها النبي إذا طلقتم النساء فطلقوهن لعدتهن ـ إلى قوله: ـ لعل الله يحدث بعد ذلك أمرا) ثمّ قال: كلما خالف كتاب الله والسنة فهو يرد إلى كتاب الله والسنة.

From Safwan al-Jammal, from Abu Abdullah (peace be upon him), that a man said to him: I divorced my wife three times in one sitting. He said: It is nothing. Then he said: Do you not read the Book of Allah: "O Prophet, when you divorce women, divorce them for their prescribed periods - until His saying - perhaps Allah will bring about after that some matter [Quran, 65:1]." Then he said: Whatever contradicts the Book of Allah and the Sunnah is to be referred back to the Book of Allah and the Sunnah.

Hadith 28047

عن إسماعيل بن عبد الخالق، قال: سمعت أبا عبدالله (عليه السلام) يقول: طلق عبدالله بن عمر امرأته ثلاثا، فجعلها رسول الله (صلى الله عليه وآله) واحدة، وردَّه إلى الكتاب والسنة.

From Isma'il ibn Abd al-Khaliq, he said: I heard Abu Abdullah (peace be upon him) saying: Abdullah ibn Umar divorced his wife three times, so the Messenger of Allah (peace be upon him and his family) made it count as one, and referred him back to the Book and the Sunnah.

Hadith 28048

عن موسى بن أشيم، قال: كنت عند أبي عبدالله (عليه السلام)، إذ أتاه رجل، فسأله عن رجل طلق امرأته ثلاثاً في مقعد، فقال أبو عبدالله (عليه السلام): قد بانت منه بثلاث، ثمّ جاءه آخر، فسأله عن تلك المسألة بعينها، فقال: ليس بطلاق،

From Musa ibn Ashyam, he said: I was with Abu Abdullah (peace be upon him) when a man came to him and asked him about a man who divorced his wife three times in one sitting. Abu Abdullah (peace be upon him) said: She has been separated from him by three divorces. Then another man came and asked him about that same exact question, and he said: It is not a divorce.

فأظلم علي البيت لما رأيت منه، فالتفت إلي فقال: يا ابن أشيم ! إن الله فوض الملك إلى سليمان، فقال: (هذا عطاؤنا فامنن أو أمسك بغير حساب)، وإنّ الله فوض إلى محمّد (صلى الله عليه وآله) أمر دينه، فقال: (وما آتيكم الرسول فخذوه ومانهيكم عنه فانتهوا)، فما كان مفوضا إلى محمّد (صلى الله عليه وآله) فقد فوض إلينا.

The house became dark for me because of what I saw from him. He turned to me and said: O Ibn Ashyam! Indeed Allah delegated authority to Solomon, so He said: "This is Our gift, so bestow or withhold without account [Quran, 38:39]." And indeed Allah delegated to Muhammad (peace be upon him and his family) the matter of his religion, so He said: "And whatever the Messenger gives you, take it; and whatever he forbids you, abstain from it [Quran, 59:7]." So whatever was delegated to Muhammad (peace be upon him and his family) has been delegated to us.

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Hadith 28049

عن موسى بن أشيم، قال: دخلت على أبي عبدالله (عليه السلام)، فسألته عن رجل طلق امرأته ثلاثا في مجلس؟ فقال: ليس بشيء،

From Musa ibn Ashyam, he said: I entered upon Abu Abdullah (peace be upon him) and asked him about a man who divorced his wife three times in one sitting. He said: It is nothing.

فأنا في مجلسي إذ دخل عليه رجل، فسأله عن رجل طلق امرأته ثلاثا في مجلس، فقال: ترد الثلاث إلى واحدة، فقد وقعت واحدة، ولا يردّ ما فوق الثلاث إلى الثلاث، ولا إلى الواحد،

While I was in my sitting, a man entered upon him and asked him about a man who divorced his wife three times in one sitting. He said: The three are reduced to one, so one has occurred, and what is above three is not reduced to three, nor to one.

فنحن كذلك إذ جاءه آخر، فقال له: ما تقول في رجل طلق امرأته ثلاثا في مجلس؟ فقال إذا طلق الرجل امرأته ثلاثا بانت منه، فلم تحلّ له حتى تنكح زوجا غيره،

We were like that when another came and said to him: What do you say about a man who divorced his wife three times in one sitting? He said: When a man divorces his wife three times, she is separated from him and does not become lawful for him until she marries another husband.

فأظلم علي البيت، وتحيّرت من جوابه في مجلس واحد بثلاثة أجوبة مختلفة في مسألة واحدة، فقال: يا أبن أشيم ! أشككت؟ ود الشيطان أنك شككت، إذا طلق الرجل امرأته على غير طهر ولغير عدّة ـ كما قال الله عزّ وجلّ ـ ثلاثا أو واحدة، فليس طلاقه بطلاق، وإذا طلق الرجل امرأته ثلاثا وهي على طهر من غير جماع بشاهدين عدلين، فقد وقعت واحدة وبطلت الثنتان، ولا يرّد ما فوق الواحدة إلى الثلاث، ولا إلى الواحدة، وإذا طلق الرجل امرأته ثلاثا على العدّة ـ كما أمر الله عزّ وجلّ ـ فقد بانت منه، ولا تحلّ له، حتى تنكح زوجا غيره، فلا تشكن يا ابن أشيم، ففي كلّ ـ والله ـ من ذلك الحق.

The house became dark for me, and I was confused by his answer in one sitting with three different answers to one question. He said: O Ibn Ashyam! Did you doubt? Satan wishes that you would doubt. When a man divorces his wife not in a state of purity and not according to the waiting period - as Allah Almighty said - three times or once, his divorce is not a divorce. And when a man divorces his wife three times while she is in a state of purity without intercourse, in the presence of two just witnesses, then one has occurred and the other two are void, and what is above one is not reduced to three, nor to one. And when a man divorces his wife three times according to the waiting period - as Allah Almighty commanded - then she is separated from him and does not become lawful for him until she marries another husband. So do not doubt, O Ibn Ashyam, for in each of these - by Allah - is the truth.

Hadith 28050

عن هارون بن خارجة، عن أبي عبدالله (عليه السلام)، قال: قلت: إني ابتليت، فطلّقت أهلي ثلاثا في دفعة، فسألت أصحابنا، فقالوا: ليس بشيء، وإن المرأة قالت: لا أرضى حتى تسأل أبا عبدالله (عليه السلام)، فقال: ارجع إلى أهلك فليس عليك شيء.

From Harun ibn Kharija, from Abu Abdullah (peace be upon him), he said: I said: I was afflicted, so I divorced my wife three times at once. I asked our companions, and they said: It is nothing. But the

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woman said: I will not be satisfied until you ask Abu Abdullah (peace be upon him). He said: Return to your wife, for there is nothing upon you.

Hadith 28051

عن عثمّان بن عيسى، عن سماعة، قال: سألته عن رجل يطلق امرأته ثلاثا في مجلس واحد؟ فقيل له: إنها واحدة. فقال لها: أنت امرأتي، فقالت: لا أرجع إليك أبدا، فقال: لا يحل لاحد أن يتزوجها غيره.

From Uthman ibn Isa, from Sama'a, who said: I asked him about a man who divorces his wife three times in one sitting. He was told: "It counts as one." So he said to her: "You are my wife." But she said: "I will never return to you." He said: "It is not permissible for anyone other than him to marry her."

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CHAPTER 30

That If An Opponent Believes In The Occurrence Of Three Divorces In One Sitting, Or Divorce During Menstruation, Or Swearing By Divorce And The Like, It Is Permissible To Hold Him To His Belief

[Hadith 28052 to 28062]

Hadith 28052

عن إبراهيم بن محمّد الهمدانيّ، قال: كتبت إلى أبي جعفر الثاني (عليه السلام) مع بعض أصحابنا، فأتاني الجواب بخطه: فهمت ما ذكرت من أمر ابنتك وزوجها إلى أن قال:

From Ibrahim ibn Muhammad al-Hamdani, who said: I wrote to Abu Ja'far the Second (peace be upon him) through one of our companions, and the reply came to me in his handwriting: I understood what you mentioned about your daughter and her husband... until he said:

ومن حنثه بطلاقها غير مرّة، فانظر فإن كان ممن يتولانا ويقول بقولنا فلا طلاق عليه ؛ لأنّه لم يأت أمرا جهله، وإن كان ممن لا يتولانا ولا يقول بقولنا فاختلعها منه، فانّه إنما نوى الفراق بعينه.

And regarding his breaking his oath by divorcing her more than once, look and see: if he is one of those who follows us and says what we say, then there is no divorce upon him, because he did not do something he was ignorant of. But if he is one of those who does not follow us and does not say what we say, then have her seek khula (divorce by mutual consent) from him, for he indeed intended separation specifically.

Hadith 28053

عن الهيثمّ بن أبي مسروق، عن بعض أصحابه، قال: ذكر عند الرضا (عليه السلام) بعض العلويين ممن كان ينتقصه فقال: أما انه مقيم على حرام قلت: جعلت فداك، وكيف وهي امرأته؟ قال: لانه قد طلقها، قلت: كيف طلقها؟ قال: طلقها وذلك دينه فحرمت عليه.

From al-Haytham ibn Abi Masruq, from some of his companions, who said: Some of the Alawites who used to disparage him was mentioned in the presence of al-Rida (peace be upon him), so he said: Indeed, he is persisting in what is forbidden. I said: May I be sacrificed for you, but how is that when she is his wife? He said: Because he has divorced her. I said: How did he divorce her? He said: He divorced her, and that is his religion, so she became forbidden to him.

Hadith 28054

عن عبد الرحمن البصري، عن أبي عبدالله (عليه السلام)، قال: قلت له: امرأة طلقت على غير السنّة، فقال: يتزوج هذه المرأة، لا تترك بغير زوج.

From Abd al-Rahman al-Basri, from Abu Abdullah (peace be upon him), he said: I said to him: A woman who was divorced in a manner contrary to the Sunnah. He said: This woman may be

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married, she should not be left without a husband.

Hadith 28055

عن عبدالله بن سنان، قال: سألته عن رجل طلق امرأته لغير عدّة، ثمّ أمسك عنها حتى انقضت عدّتها، هل يصلح لي أن أتزوجها؟ قال: نعم، لا تترك المرأة بغير زوج.

From Abdullah ibn Sinan, he said: I asked him about a man who divorced his wife not during her waiting period (iddah), then refrained from her until her waiting period expired. Is it permissible for me to marry her? He said: Yes, a woman should not be left without a husband.

Hadith 28056

عن علي بن أبي حمزة، أنه سأل أبا الحسن (عليه السلام) عن المطلقة على غير السنة أيتزوجها الرجل؟ فقال: ألزموهم من ذلك ما ألزموه أنفسهم، وتزوّجوهنّ، فلا بأس بذلك.

From Ali ibn Abi Hamza, that he asked Abu al-Hasan (peace be upon him) about a woman divorced in a manner contrary to the Sunnah - may a man marry her? He said: Hold them to what they have held themselves to, and marry them, for there is no harm in that.

Hadith 28057

عن جعفر بن سماعة، أنّه سئل عن امرأة طلقت على غير السنّة، ألي أن أتزوّجها؟ فقال: نعم، فقلت له: ألست تعلم أن علي بن حنظلة روى: إياكم والمطلقات ثلاثا على غير السنّة، فإنّهنّ ذوات أزواج؟ فقال: يا بنيّ! رواية علي ابن أبي حمزه أوسع على الناس، روى عن أبي الحسن (عليه السلام)، انه قال: ألزموهم من ذلك ما ألزموه أنفسهم وتزوّجوهنّ، فلا بأس بذلك.

From Ja'far ibn Sama'ah, that he was asked about a woman who was divorced contrary to the Sunnah: "Is it permissible for me to marry her?" He said: "Yes." So I said to him: "Do you not know that Ali ibn Hanzalah narrated: 'Beware of women divorced three times contrary to the Sunnah, for they are still married women'?" He said: "O my son! The narration of Ali ibn Abi Hamzah is more lenient for the people. He narrated from Abu al-Hasan (peace be upon him) that he said: 'Hold them to what they have bound themselves to, and marry them, for there is no harm in that.'"

Hadith 28058

عن عبد الاعلى، عن أبي عبدالله (عليه السلام) قال: سألته عن الرجل يطلق امرأته ثلاثا؟ قال: إن كان مستخفا بالطلاق ألزمته ذلك.

From Abd al-A'la, from Abu Abdullah (peace be upon him), he said: I asked him about a man who divorces his wife three times. He said: "If he was treating divorce lightly, then bind him to that."

Hadith 28059

عن أبي مالك الحضرمي، عن أبي العبّاس البقباق، قال: دخلت على أبي عبدالله (عليه السلام)، فقال لي: ارو عنّي أن من طلق امرأته ثلاثا في مجلس واحد، فقد بانت منه.

From Abu Malik al-Hadrami, from Abu al-Abbas al-Baqbaq, he said: I entered upon Abu Abdullah

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(peace be upon him), and he said to me: "Narrate from me that whoever divorces his wife three times in one sitting, then she has been separated from him."

Hadith 28060

عن جعفر ابن محمّد بن عبدالله العلوي، عن أبيه، قال: سألت أبا الحسن الرضا (عليه السلام) عن تزويج المطلقات ثلاثاً، فقال لي: إن طلاقكم لا يحل لغيركم، وطلاقهم يحلّ لكم : لأنّكم لا ترون الثلاث شيئاً، وهم يوجبونها.

From Ja'far ibn Muhammad ibn Abdullah al-Alawi, from his father, he said: I asked Abu al-Hasan al-Rida (peace be upon him) about marrying women who have been divorced three times. He said to me: Your divorce does not make them lawful for others, and their divorce makes them lawful for you, because you do not consider the three divorces as anything, while they make it binding.

Hadith 28061

وقال (عليه السلام): من كان يدين بدين قوم لزمته أحكامهم.

And he (peace be upon him) said: Whoever follows the religion of a people, their rulings become binding upon him.

Hadith 28062

عن الحسين بن أحمد المالكي، عن عبدالله بن طاووس، قال: قلت لابي الحسن الرضا (عليه السلام): إن لي ابن أخ، زوّجته ابنتي، وهو يشرب الشراب، ويكثر ذكر الطلاق، فقال: إن كان من إخوانك فلا شيء عليه، وإن كان من هؤلاء فأبنها منه، فإنّه عنى الفراق.

From al-Husayn ibn Ahmad al-Maliki, from Abdullah ibn Tawus, he said: I said to Abu al-Hasan al-Rida (peace be upon him): I have a nephew whom I married to my daughter, and he drinks alcohol and frequently mentions divorce. He said: If he is from your brothers (in faith), then nothing is incumbent upon him, but if he is from these people (those of different madhab), then separate her from him, for he means separation.

قال: قلت: أليس قد روي عن أبي عبدالله (عليه السلام) أنه قال: إياكم والمطلّقات ثلاثاً في مجلس فانّهنَّ ذوات الأزواج، فقال: ذلك من إخوانكم لا من هؤلاء، إنه من دان بدين قوم لزمته أحكامهم.

He said: I said: Has it not been narrated from Abu Abdullah (peace be upon him) that he said: Beware of women divorced three times in one sitting, for they are still married women? He said: That applies to your brothers, not to these people. Indeed, whoever follows the religion of a people, their rulings become binding upon him.

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CHAPTER 31

The Woman Who Is Divorced Contrary To The Sunnah, And When Her Husband Is Asked After The Conditions Are Met: "Have You Divorced So-and-so?" And He Says "Yes" Or "I Divorced Her," The Divorce Is Valid

[Hadith 28063 to 28065]

Hadith 28063

عن حفص بن البختري، عن أبي عبدالله (عليه السلام) في رجل طلق امرأته ثلاثا، فأراد رجل أن يتزوجها، كيف يصنع؟ قال: يأتيه فيقول: طلقت فلانة؟ فاذا قال: نعم، تركها ثلاثة أشهر ثمّ خطبها إلى نفسها.

From Hafs ibn al-Bakhtari, from Abu Abdullah (peace be upon him) regarding a man who divorced his wife three times, and another man wanted to marry her - how should he proceed? He said: He should come to him and say: "Have you divorced so-and-so?" When he says "Yes," he should leave her for three months, then propose to her directly.

أقول: حمله الشيخ على غير المخالف ؛ لما مرّ، ويحتمل الحمل على الاستحباب.

I (Hurr Amili) say: The Shaykh interpreted this as applying to non-opponents, for the reason that passed, and it is possible to interpret it as recommendation.

Hadith 28064

عن إسحاق بن عمار، عن أبي عبدالله (عليه السلام) في رجل يريد تزويج امرأة قد طلقت ثلاثا، كيف يصنع فيها؟ قال: يدعها حتى تحيض وتطهر، ثمّ يأتي زوجها ومعه رجلان، فيقول له: قد طلقت فلانة؟ فاذا قال: نعم، تركها حتى تمضي ثلاثة أشهر، ثمّ خطبها إلى نفسه.

From Ishaq ibn Ammar, from Abu Abdullah (peace be upon him) regarding a man who wants to marry a woman who has been divorced three times - how should he proceed with her? He said: He should leave her until she menstruates and becomes pure, then he should come to her husband with two men with him, and say to him: "Have you divorced so-and-so?" When he says "Yes," he should leave her until three months pass, then propose to her directly.

Hadith 28065

عن عبد الرحمن بن أعبدالله قال: سألت أبا عبدالله (عليه السلام) عن امرأة طلقت على غير السنة ما تقول في تزويجها؟ قال: تزوج ولا تترك.

From Abd al-Rahman ibn A'bdullah who said: I asked Abu Abdullah (peace be upon him) about a woman who was divorced contrary to the Sunnah - what do you say about marrying her? He said: Marry her and do not leave her.

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CHAPTER 32

The Condition That Reaching Puberty Is Required For The Validity Of Divorce, So The Divorce Of A Boy Is Not Valid Unless He Reaches Ten Years

[Hadith 28066 to 28073]

Hadith 28066

عن أبي الصباح الكناني، عن أبي عبدالله (عليه السلام)، قال: ليس طلاق الصبي بشيء.

From Abu al-Sabah al-Kinani, from Abu Abdullah (peace be upon him), who said: The divorce of a boy is nothing.

Hadith 28067

عن ابن أبي عمير، عن أبي عبدالله (عليه السلام)، قال: يجوز طلاق الصبي إذا بلغ عشر سنين.

From Ibn Abi Umayr, from Abu Abdullah (peace be upon him), who said: The divorce of a boy is permitted when he reaches ten years.

Hadith 28068

عن السكوني، عن أبي عبدالله (عليه السلام)، قال: كل طلاق جائز إلا طلاق المعتوه، أوالصبيّ، أو مبرسم، أو مجنون، أو مكره.

From al-Sakuni, from Abu Abdullah (peace be upon him), he said: Every divorce is permissible except the divorce of the mentally deficient, or the child, or one afflicted with pleurisy, or the insane, or one under coercion.

Hadith 28069

عن أبي بصير، عن أبي عبدالله (عليه السلام) قال: لا يجوز طلاق الصبي ولا السكران.

From Abu Basir, from Abu Abdullah (peace be upon him), he said: The divorce of a child or an intoxicated person is not valid.

Hadith 28070

عن عدة من أصحابه، عن ابن بكير، عن أبي عبدالله (عليه السلام)، قال: (لا يجوز) طلاق الغلام، ووصيته، وصدقته إن لم يحتلم. وفي نسخة (يجوز)، وكذا في رواية الشيخ.

From several of his companions, from Ibn Bukayr, from Abu Abdullah (peace be upon him), he said: The divorce of a young man is not valid, nor his bequest, nor his sadaqah if he has not reached puberty. In one manuscript it states "is valid," and likewise in the narration of al-Shaykh.

أقول: على النسخة الأُولى، يكون مخصوصا بما دون العشر سنين، وعلى الثانية بها وبما فوقها.

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I (Hurr Amili) say: According to the first manuscript, it would be specific to those under ten years of age, and according to the second, it applies to that age and above.

Hadith 28071

وبهذا الإسناد قال: يجوز طلاق الغلام إذا بلغ عشر سنين.

With this chain of narration he said: The divorce of a boy is permissible when he reaches ten years of age.

Hadith 28072

عن سماعة، قال: سألته عن طلاق الغلام ولم يحتلم، وصدقته، فقال: إذا طلق للسنة ووضع الصدقة في موضعها وحقها فلا بأس وهو جائز.

From Sama'a, he said: I asked him about the divorce of a boy who had not yet had a nocturnal emission, and about his sadaqah. He said: If he divorces according to the Sunna and places the sadaqah in its proper place and its due right, then there is no harm and it is permissible.

Hadith 28073

عن الحسين بن علوان، عن جعفر بن محمّد، عن أبيه، عن علي (عليهم السلام) قال: لا يجوز طلاق الغلام حتى يحتلم.

From al-Husayn ibn Alwan, from Ja'far ibn Muhammad, from his father, from Ali (peace be upon them) said: The divorce of a boy is not valid until he has a nocturnal emission.

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CHAPTER 33

It Is Permissible For A Father To Marry Off His Minor Son, But It Is Not Permissible For Him To Divorce On His Behalf

[Hadith 28074 to 28075]

Hadith 28074

عن الفضل بن عبد الملك، قال: سألت أبا عبدالله (عليه السلام) عن الرجل يزوج ابنه وهو صغير؟ قال: لا بأس، قلت: يجوز طلاق الاب؟ قال: لا.

From al-Fadl ibn Abd al-Malik, he said: I asked Abu Abdullah (peace be upon him) about a man marrying off his son while he is young. He said: There is no harm in it. I said: Is the father's divorce permissible? He said: No.

Hadith 28075

عن عبيد بن زرارة، عن أبي عبدالله (عليه السلام)، قال: سألته عن الصبي يزوج الصبية، هل يتوارثان؟ قال: إن كان أبواهما هما اللذان زوجاهما فنعم، قلنا: يجوز طلاق الاب؟ قال: لا.

From Ubayd ibn Zurarah, from Abu Abdullah (peace be upon him), he said: I asked him about a boy marrying a girl - do they inherit from each other? He said: If it was their fathers who married them to each other, then yes. We said: Is the father's divorce permissible? He said: No.

أقول: وتقدم ما يدل على أن الطلاق بيد الزوج، ويأتي ما يدل عليه، وتقدم مايدل على المقصود أيضاً، في أحاديث ثبوت الولاية للاب والجد، وفي المهور، وفي أحاديث ما لو زوجه غير الاب والجد، وغير ذلك.

I (Hurr Amili) say: What has preceded indicates that divorce is in the hands of the husband, and what will come also indicates this. What has preceded also indicates the intended meaning in the hadiths establishing guardianship for the father and grandfather, and regarding dowries, and in the hadiths about what happens if someone other than the father and grandfather marries him off, and other matters.

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CHAPTER 34

The Condition Of Sound Mind For The Validity Of Divorce, So The Divorce Of The Insane Is Not Valid, Nor That Of The Mentally Deficient

[Hadith 28076 to 28083]

Hadith 28076

عن أبي خالد القماط قال: قلت لا عبدالله (عليه السلام): رجل يعرف رأيه مرة، وينكره اخرى، يجوز طلاق وليه عليه؟ قال: ما له هو لا يطلق؟ قلت: لا يعرف حد الطلاق، ولا يؤمن عليه إن طلق اليوم، أن يقول غدا: لم اطلق، قال: ما أراه إلا بمنزلة الامام، يعني: الولي.

From Abu Khalid al-Qammat, he said: I said to Abdullah (peace be upon him): A man who recognizes his opinion sometimes and denies it at other times - is the divorce of his guardian over him permissible? He said: What is wrong with him that he does not divorce? I said: He does not know the limits of divorce, and it is not safe that if he divorces today, he might say tomorrow: I did not divorce. He said: I see him only in the position of the imam, meaning: the guardian.

Hadith 28077

عن معمر بن يحيى، عن أبي جعفر، وأبي عبدالله (عليهما السلام): أن المولّه ليس له طلاق، ولا عتقه عتق.

From Mu'ammar ibn Yahya, from Abu Ja'far and Abu Abdullah (peace be upon both of them): That the one who is declared incompetent (al-muwalla) has no right to divorce, nor is his emancipation (of slaves) valid.

Hadith 28078

عن السكوني، عن أبي عبدالله (عليه السلام)، قال: كل طلاق جائز إلا طلاق المعتوه، أو الصبي، أو مبرسم، أو مجنون، أو مكره.

From al-Sakuni, from Abu Abdullah (peace be upon him), he said: Every divorce is permissible except the divorce of the mentally deficient, or the child, or one afflicted with fever delirium, or the insane, or one under coercion.

Hadith 28079

عن الحلبي، قال: سألت أبا عبدالله (عليه السلام) عن طلاق المعتوه الذاهب العقل، أيجوز طلاقه؟ قال: لا، وعن المرأة إذا كانت كذلك، أيجوز بيعها وصدقتها؟ قال: لا.

From al-Halabi, he said: I asked Abu Abdullah (peace be upon him) about the divorce of the mentally deficient one who has lost his mind, is his divorce valid? He said: No. And about the woman if she is likewise, is her sale and sadaqah valid? He said: No.

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Hadith 28080

عن صفوان، عن عبدالله (الحلبي) قال: سألت أبا عبدالله (عليه السلام) عن طلاق السكران وعتقه، فقال: لايجوز قال: وسألته عن طلاق المعتوه، قال: وما هو؟ قال: قلت: الاحمق الذاهب العقل قال: لا يجوز، قلت: فالمرأة كذلك يجوز بيعها وشراؤها؟ قال: لا.

From Safwan, from Abdullah (al-Halabi), he said: I asked Abu Abdullah (peace be upon him) about the divorce of the intoxicated person and his manumission, so he said: It is not valid. He said: And I asked him about the divorce of the mentally deficient. He said: What is that? He said: I said: The fool who has lost his mind. He said: It is not valid. I said: So the woman likewise, is her sale and purchase valid? He said: No.

Hadith 28081

عن إسحاق بن جرير، عن أبي عبدالله عليه السلام قال: سألته عن السكران يطلق، أو يعتق، أو يتزوج، أيجوز له ذلك وهو على حاله؟ قال: لا يجوز له.

From Ishaq ibn Jarir, from Abu Abdullah (peace be upon him) who said: I asked him about a drunk person who divorces, or frees a slave, or marries - is this permissible for him while he is in that state? He said: It is not permissible for him.

Hadith 28082

عن زكريا بن آدم، قال: سألت الرضا (عليه السلام) عن طلاق السكران، والصبي، والمعتوة، والمغلوب على عقله، ومن لم يتزوج بعد، فقال: لا يجوز.

From Zakariya ibn Adam, who said: I asked al-Rida (peace be upon him) about the divorce of a drunk person, a child, a mentally deficient person, one who is overcome in his mind, and one who has not yet married. He said: It is not permissible.

Hadith 28083

عن أبي بصير، عن أبي عبدالله (عليه السلام)، أنه سئل عن المعتوه، أيجوز طلاقه؟ فقال: ما هو؟ قال: فقلت: الاحمق الذاهب العقل، فقال: نعم.

From Abu Basir, from Abu Abdullah (peace be upon him), that he was asked about a mentally deficient person - is his divorce valid? He said: What is he? I said: The fool who has lost his mind. He said: Yes.

أقول: حمله الشيخ على ناقص العقل، لا فاقده، وعلى تولي الولي الطلاق. ورواه الصدوق بإسناده، عن حماد بن عيسى، عن شعيب. قال الصدوق: يعني: إذا طلّق عنه وليه فأما ان يطلق هو فلا، واستدل بما يأتي. أقول: وتقدم ما يدل على ذلك، يأتي ما يدل عله في العتق وغيره.

I (Hurr Amili) say: The Shaykh interpreted this as referring to one who is deficient in mind, not one who has completely lost it, and that the guardian undertakes the divorce. Al-Saduq narrated it through his chain from Hammad ibn Isa, from Shu'ayb. Al-Saduq said: He means if his guardian

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divorces on his behalf, but if he divorces himself, then no, and he provided evidence for what follows. I (Hurr Amili) say: What has preceded indicates this, and what will come indicates it regarding manumission and other matters.

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CHAPTER 35

It Is Permissible For The Guardian To Divorce On Behalf Of The Insane Person When There Is Benefit

[Hadith 28084 to 28086]

Hadith 28084

عن أبي خالد القماط، قال: قلت لابي عبدالله (عليه السلام): الرجل الاحمق الذاهب العقل يجوز طلاق وليه عليه؟ قال: ولم لا يطلق هو؟ قلت: لا يؤمن إن طلق هو أن يقول غدا: لم اطلق، أولا يحسن أن يطلق، قال: ما أرى وليه إلا بمنزلة السلطان.

From Abu Khalid al-Qammat, he said: I said to Abu Abdullah (peace be upon him): The foolish man who has lost his mind - is it permissible for his guardian to divorce on his behalf? He said: Why should he not divorce himself? I said: It is not safe that if he divorces himself, he might say tomorrow: I did not divorce, or he does not know how to divorce properly. He said: I do not see his guardian except as being in the position of the ruler.

Hadith 28085

عن شهاب بن عبد ربه، قال: قال أبو عبدالله (عليه السلام): المعتوه الذي لا يحسن أن يطلّق، يطلق عنه وليه على السنة، قلت: فطلقها ثلاثا في مقعد، قال ترد إلى السنّة، فاذا مضت ثلاثة أشهر، أو ثلاثة قروء، فقد بانت منه بواحدة.

From Shihab ibn Abd Rabbih, he said: Abu Abdullah (peace be upon him) said: The mentally deficient person who does not know how to divorce properly - his guardian divorces on his behalf according to the Sunnah. I said: What if he divorced her three times in one sitting? He said: It is returned to the Sunnah, so when three months have passed, or three menstrual periods, then she has been separated from him by one [divorce].

Hadith 28086

عن أبي خالد القماط، عن أبي عبدالله (عليه السلام) في طلاق المعتوه قال: يطلق عنه وليه فاني أراه بمنزلة الامام عليه.

From Abu Khalid al-Qammat, from Abu Abdullah (peace be upon him) regarding the divorce of a mentally incompetent person, he said: His guardian divorces on his behalf, for I see him as being in the position of an imam over him.

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CHAPTER 36

Invalidity Of Divorce By An Intoxicated Person

[Hadith 28087 to 28090]

Hadith 28087

عن الحلبي، عن أبي عبدالله (عليه السلام)، قال: سألته عن طلاق السكران، فقال لا يجوز، ولا كرامة.

From al-Halabi, from Abu Abdullah (peace be upon him), he said: I asked him about the divorce of an intoxicated person, so he said: It is not permissible, and there is no honor in it.

Hadith 28088

عن أبي الصباح الكناني، عن أبي عبدالله (عليه السلام)، قال: ليس طلاق السكران بشيء.

From Abu al-Sabah al-Kinani, from Abu Abdullah (peace be upon him), he said: The divorce of an intoxicated person is nothing.

Hadith 28089

عن الحلبي، قال: سألت أبا عبدالله (عليه السلام) عن طلاق السكران، فقال: لا يجوز، ولا كرامة.

From al-Halabi, he said: I asked Abu Abdullah (peace be upon him) about the divorce of an intoxicated person. He said: It is not permissible, and there is no honor in it.

Hadith 28090

عن الحلبي، عن أبي عبدالله (عليه السلام)، قال: سألته عن طلاق السكران، فقال: لا يجوز، ولا عتقه.

From al-Halabi, from Abu Abdullah (peace be upon him), he said: I asked him about the divorce of an intoxicated person. He said: It is not permissible, nor is his manumission (of slaves).

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CHAPTER 37

That Choice Is A Condition For The Validity Of Divorce, So The Divorce Of One Under Coercion Is Invalid, And The Compelled One

[Hadith 28091 to 28094]

Hadith 28091

عن زرارة، عن أبي جعفر (عليه السلام)، قال: سألته عن طلاق المكره وعتقه، فقال: ليس طلاقه بطلاق، ولا عتقه بعتق، فقلت: إني رجل تاجر أمر بالعشّار، ومعي مال، فقال: غيبه ما استطعت، وضعه مواضعه، فقلت: فان حلفني بالطلاق والعتاق، فقال: احلف له، ثمّ أخذ تمرة فحفر بها من زبد كان قدامة، فقال: ما ابالي حلفت لهم بالطلاق والعتاق، أو آكلها.

From Zurarah, from Abu Ja'far (peace be upon him), he said: I asked him about the divorce of one under coercion and his manumission. He said: His divorce is not a divorce, nor is his manumission a manumission. I said: I am a merchant who is ordered by the tax collector, and I have wealth with me. He said: Hide it as much as you can and place it in its proper places. I said: What if he makes me swear by divorce and manumission? He said: Swear to him. Then he took a date and dug with it into some butter that was in front of him, and said: I do not care if I swear to them by divorce and manumission, or eat this.

Hadith 28092

عن عبدالله بن سنان، عن أبي عبدالله (عليه السلام)، قال: سمعته يقول: لو أن رجلا مسلما مر بقوم ليسوا بسلطان، فقهروه حتى يتخوف على نفسه أن يعتق أو يطلق ففعل لم يكن عليه شيء.

From Abdullah ibn Sinan, from Abu Abdullah (peace be upon him), he said: I heard him say: If a Muslim man passed by a people who are not authorities, and they overpowered him until he feared for himself that he should manumit or divorce, and he did so, there would be nothing upon him.

Hadith 28093

عن إسماعيل الجعفي في حديث انه قال لابي جعفر (عليه السلام): أمر بالعشّار، فيحلفني بالطلاق (والعتاق)، قال: احلف له.

From Ismail al-Ju'fi in a hadith that he said to Abu Ja'far (peace be upon him): I am commanded by the tax collector, so he makes me swear by divorce (and manumission). He said: Swear to him.

Hadith 28094

عن يحيى بن عبدالله بن الحسن، عن أبي عبدالله (عليه السلام) قال: سمعته يقول: لا يجوز طلاق في استكراه ولا تجوز يمين في قطيعة رحم ـ إلى أن قال: ـ وأنما الطلاق ما اريد به الطلاق من غير استكراه ولا إضرار.

From Yahya ibn Abdullah ibn al-Hasan, from Abu Abdullah (peace be upon him) who said: I heard him say: Divorce is not valid under coercion, nor is an oath valid in severing kinship ties - until he said: Rather, divorce is only what is intended as divorce without coercion or harm.

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CHAPTER 38

Ruling That If Someone Divorces For The Sake Of Appeasing His Family Without Intending Divorce, The Divorce Does Not Take Effect

[Hadith 28095 to 28095]

Hadith 28095

عن منصور بن يونس، قال: سألت العبد الصالح (عليه السلام) وهو بالعريض، فقلت له: جعلت فداك إني تزوجت امرأة، وكانت تحبني، فتزوّجت عليها ابنة خالي، وقد كان لي من المرأة ولد، فرجعت إلى بغداد فطلقتها واحدة، ثمّ راجعتها، ثمّ طلقتها الثانية، ثمّ راجعتها، ثمّ خرجت من عندها اريد سفري هذا، حتى إذا كنت بالكوفة أردت النظر إلى ابنة خالي،

From Mansur ibn Yunus, who said: I asked the righteous servant (peace be upon him) while he was at al-Uraid, and I said to him: May I be made your ransom, I married a woman and she loved me. Then I married my maternal cousin over her, and I had a child from the first woman. I returned to Baghdad and divorced her once, then I took her back, then I divorced her a second time, then I took her back. Then I left her company intending this journey of mine, until when I was in Kufa I wanted to see my maternal cousin.

فقالت اختي وخالتي: لا تنظر إليها ـ والله ـ أبدا حتى تطلق فلانة، فقلت: ويحكم ـ والله ـ ما لي إلى طلاقها من سبيل،

My sister and my maternal aunt said: By Allah, you will never see her until you divorce so-and-so. I said: Woe to you! By Allah, I have no way to divorce her.

فقال لي: هو ما شانك، ليس لك إلى طلاقها من سبيل،

He said to me: That is your concern - you have no way to divorce her.

فقلت: إنه كانت لي منها ابنة، وكانت ببغداد، وكانت هذه بالكوفة، وخرجت من عندها قبل ذلك بأربع، فأبوا علي إلا تطليقها ثلاثاً، ولا والله ـ جعلت فداك ـ ما أردت الله، ولا أردت إلا أن اداريهم عن نفسي، وقد امتلأ قلبي من ذلك،

I said: I had a daughter from her, and she was in Baghdad, while this one was in Kufa, and I had left her company four days before that. They refused to accept anything from me except divorcing her three times. By Allah, may I be made your ransom, I did not intend Allah's sake, and I intended nothing except to appease them and get them off my back, and my heart has become filled with regret over this.

فمكث طويلا مطرقا، ثمّ رفع رأسه، وهو متبسّم فقال: أما بينك وبين الله فليس بشيء، ولكن إن قدموك إلى السلطان أبانها منك.

He remained silent for a long time with his head down, then he raised his head while smiling and said: As for between you and Allah, it is nothing, but if they bring you before the ruler, he will separate her from you.

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CHAPTER 39

That Direct Personal Action Is Not Required For Divorce To Occur, Rather Agency Is Valid In It. If One Appoints Two Agents, One Cannot Act Alone, Rather Their Divorce Is Valid When They Act Together

[Hadith 28096 to 28101]

Hadith 28096

عن سعيد الاعرج، عن أبي عبدالله (عليه السلام) قال: سألته عن رجل جعل أمر امرأته إلى رجل، فقال: اشهدوا أني قد جعلت أمر فلانة إلى فلان، (فيطلّقها)، أيجوز ذلك للرجل؟ فقال: نعم.

From Sa'id al-A'raj, from Abu Abdullah (peace be upon him) who said: I asked him about a man who placed the matter of his wife in the hands of a man, saying: "Bear witness that I have placed the matter of so-and-so in the hands of so-and-so to divorce her." Is this permissible for the man? He said: Yes.

Hadith 28097

عن السكوني، عن أبي عبدالله (عليه السلام)، قال: قال أميرالمؤمنين (عليه السلام) في رجل جعل طلاق امرأته بيد رجلين، فطلق أحدهما، وأبى الآخر، فأبى أمير المؤمنين (عليه السلام) أن يجيز ذلك، حتى يجتمعا جميعا على طلاق.

From al-Sakuni, from Abu Abdullah (peace be upon him), who said: Amir al-Mu'minin (peace be upon him) said regarding a man who placed the divorce of his wife in the hands of two men, then one of them divorced her while the other refused - Amir al-Mu'minin (peace be upon him) refused to validate that until they both agreed together on the divorce.

Hadith 28098

عن أبي هلال الرازيّ، قال: قلت لابي عبدالله (عليه السلام): رجل وكل رجلا وكل رجلا يطلق امرأته إذا حاضت وطهرت، وخرج الرجل، فبدا له، فأشهد أنه قد أبطل ما كان أمره به، وأنّه قد بدا له في ذلك قال: فليعلم أهله وليعلم الوكيل.

From Abu Hilal al-Razi, he said: I said to Abu Abdullah (peace be upon him): A man appointed another man as his agent, who then appointed another man to divorce his wife when she menstruates and becomes pure, and the man left. Then he changed his mind and testified that he had nullified what he had ordered him to do, and that he had changed his mind about that. He said: Let him inform his family and let him inform the agent.

Hadith 28099

عن مسمع، عن أبي عبدالله (عليه السلام) في رجل جعل طلاق امرأته بيد رجلين، فطلّق أحدهما، وأبى الآخر، فأبى علي (عليه السلام) أن يجيز ذلك، حتّى يجتمعا على الطلاق جميعا.

From Misma, from Abu Abdullah (peace be upon him) regarding a man who placed the divorce of

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his wife in the hands of two men, and one of them divorced her while the other refused. Ali (peace be upon him) refused to validate that until they both agreed upon the divorce together.

Hadith 28100

عن زرارة، عن أبي عبدالله (عليه السلام)، قال: لا تجوز الوكالة في الطلاق.

From Zurarah, from Abu Abdullah (peace be upon him), he said: Agency in divorce is not valid.

أقول: حمله الشيخ على حضور الزوج، وخص الاحاديث السابقة بالغائب، ويحتمل الحمل على التقية، وعلى الانكار دون الاخبار، وعلى الكراهة دون المنع وعلى عدم ثبوت الوكالة، وعلى عدم علم الوكيل بطهر الزوجة، وعلى عدم جوازها بمجرد الدعوى وغير ذلك. ويأتي ما يدل على جواز الوكالة للحاضر، فيما إذا وكلها في طلاق نفسها.

I (Hurr Amili) say: The Sheikh interpreted this as applying to the presence of the husband, and specified the previous hadiths as applying to the absent husband. It is possible to interpret it as applying to dissimulation (taqiyyah), or to denial rather than informing, or to dislike rather than prohibition, or to the non-establishment of agency, or to the agent's lack of knowledge of the wife's purification, or to its invalidity based on mere claim, and other interpretations. What follows will indicate the permissibility of agency for one who is present, in cases where he appoints her as agent for divorcing herself.

Hadith 28101

عن محمّد بن عيسى اليقطينيّ، قال: بعث إلي أبوالحسن (عليه السلام) رزم ثياب - إلى أن قال: - وأمر بدفع ثلاثمّائة دينار إلى رحيم، زوجة كانت له، وأمرني أن اطلقها عنه، وامتعها بهذا المال، وأمرني أن أشهد على طلاقها صفوان بن يحيى، وآخر نسي محمّد بن عيسى اسمه.

From Muhammad ibn Isa al-Yaqtini, he said: Abu al-Hasan (peace be upon him) sent me bundles of clothes - until he said: - and he ordered the payment of three hundred dinars to Rahim, who was a wife he had, and he ordered me to divorce her on his behalf, and to provide her with this money as compensation, and he ordered me to have Safwan ibn Yahya and another person witness her divorce - Muhammad ibn Isa forgot his name.

أقول: وتقدم ما يدل على ذلك في الوكاله، وفي الطلاق ثلاثا، وفي النشوز، وغير ذلك.

I (Hurr Amili) say: What has preceded indicates this in the chapter on agency, in the chapter on triple divorce, in the chapter on marital discord, and elsewhere.

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CHAPTER 40

It Is Not Permissible To Divorce A Woman Who Has Been Consummated With, Who Is Suspected (Of Pregnancy), Who Does Not Menstruate, And Who Is Of An Age Where She Could Menstruate, Except After Three Months

[Hadith 28102 to 28102]

Hadith 28102

عن البرقيّ عن داود بن أبي يزيد العطار، عن بعض أصحابنا، عن أبي عبدالله (عليه السلام)، قال: سألته عن المرأة يستراب بها، ومثلها تحمل، ومثلها لا تحمل ولا تحيض، وقد واقعها زوجها، كيف يطلقها إذا أراد طلاقها؟ قال: ليمسك عنها ثلاثة أشهر، ثمّ يطلقها.

From al-Barqi from Dawud ibn Abi Yazid al-Attar, from some of our companions, from Abu Abdullah (peace be upon him), he said: I asked him about a woman who is suspected (of pregnancy), and one like her could become pregnant, and one like her does not become pregnant nor menstruate, and her husband has had intercourse with her - how should he divorce her if he wants to divorce her? He said: Let him refrain from her for three months, then divorce her.

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CHAPTER 41

That When A Man Gives His Wife A Choice, Divorce Does Not Occur Merely By Giving The Choice, Even If She Chooses Herself. But If He Delegates To Her The Authority To Divorce Herself And She Does So, It Takes Effect With The Proper Conditions

[Hadith 28103 to 28121]

Hadith 28103

عن محمّد بن مسلم، قال: سألت أبا جعفر (عليه السلام) عن الخيار، فقال: وما هو وما ذاك إنما ذاك شيء كان لرسول الله (صلى الله عليه وآله).

From Muhammad ibn Muslim, who said: I asked Abu Ja'far (peace be upon him) about the choice (khiyar), and he said: What is that and what is it? That was only something that was for the Messenger of Allah (peace be upon him and his family).

Hadith 28104

عن محمّد بن مسلم، عن أبي عبدالله (عليه السلام) في الرجل إذا خير امرأته، قال: إنما الخيرة لنا، ليس لاحد، وإنما خير رسول الله (صلى الله عليه وآله) لمكان عائشة، فاخترن الله ورسوله، ولم يكن لهنّ أن يخترن غير رسول الله صلى الله عليه وآله.

From Muhammad ibn Muslim, from Abu Abdullah (peace be upon him) regarding a man who gives his wife a choice. He said: The choice is only for us, not for anyone else. The Messenger of Allah (peace be upon him and his family) only gave a choice because of Aisha's situation, so they chose Allah and His Messenger, and it was not for them to choose other than the Messenger of Allah (peace be upon him and his family).

Hadith 28105

عن محمّد بن مسلم، قال: قلت لابي عبدالله (عليه السلام): إني سمعت أباك يقول: إن رسول الله (صلى الله عليه وآله) خير نساءه، فاخترن الله ورسوله، فلم يمسكهن على طلاق، ولو اخترن أنفسهن لبن، فقال: إن هذا حديث كان يرويه أبي، عن عائشة، وما للناس والخيار، إنما هذا شيء خص الله به رسوله.

From Muhammad ibn Muslim, he said: I said to Abu Abdullah (peace be upon him): I heard your father say that the Messenger of Allah (may Allah bless him and his family) gave his wives a choice, and they chose Allah and His Messenger, so he did not retain them upon divorce, and had they chosen themselves they would have been divorced. He said: This is a hadith that my father used to narrate from Aisha, and what do people have to do with choice? This is something that Allah specifically designated for His Messenger.

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Hadith 28106

عن عيص بن القاسم، عن أبي عبدالله (عليه السلام)، قال: سألته عن رجل خير امرأته، فاختارت نفسها، بانت منه؟ قال: لا، إنما هذا شيء كان لرسول الله (صلى الله عليه وآله) خاصة، امر بذلك ففعل، ولو اخترن أنفسهن لطلقهن، وهو قول الله عزّ وجلّ: (قل لازواجك إن كنتن تردن الحيوة الدنيا وزينتها فتعالين امتعكن واسرحكن سراحا جميلا).

From Iss ibn al-Qasim, from Abu Abdullah (peace be upon him), he said: I asked him about a man who gives his wife a choice, and she chooses herself - is she separated from him? He said: No, this is something that was specifically for the Messenger of Allah (may Allah bless him and his family). He was commanded to do that and he did it, and had they chosen themselves he would have divorced them. This is the saying of Allah, the Mighty and Glorious: Say to your wives: If you desire the life of this world and its adornment, then come, I will provide for you and release you with a gracious release [Quran, 33:28].

Hadith 28107

عن هارون بن مسلم، عن بعض أصحابنا، عن أبي عبدالله (عليه السلام) قال: قلت له: ما تقول في رجل جعل أمر امرأته بيدها؟ قال: فقال لي: ولّى الامر من ليس أهله، وخالف السنة، ولم يجز النكاح.

From Harun ibn Muslim, from some of our companions, from Abu Abdullah (peace be upon him), he said: I said to him: What do you say about a man who places the matter of his wife in her hands? He said to me: He has given authority to one who is not worthy of it, opposed the Sunnah, and the marriage contract is not valid.

Hadith 28108

عن إبراهيم بن محرز، قال: سأل رجل أبا عبدالله (عليه السلام)، وأنا عنده، فقال: رجل قال لامرأته: أمرك بيدك قال: أنى يكون هذا، والله يقول: (الرّجال قوامون على النساء)؟ ليس هذا بشيء.

From Ibrahim ibn Mihraz, he said: A man asked Abu Abdullah (peace be upon him) while I was with him, saying: A man said to his wife: Your affair is in your hand. He said: How can this be, when Allah says: Men are maintainers of women [Quran, 4:34]? This is nothing.

Hadith 28109

عن زرارة، عن أبي جعفر (عليه السلام)، قال: قلت له رجل خير امرأته، قال: إنما الخيار لها ما داما في مجلسهما، فإذا تفرّقا فلا خيار لها. أقول: حمله الشيخ على التقية، وكذا ما يأتي.

From Zurarah, from Abu Ja'far (peace be upon him), he said: I said to him: A man gave his wife the choice (of divorce). He said: The choice is only for her as long as they remain in their sitting, but if they separate, then there is no choice for her. I (Hurr Amili) say: The Shaykh interpreted this as taqiyyah, and likewise what follows.

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Hadith 28110

عن زرارة، ومحمّد بن مسلم، عن أحدهما (عليهما السلام)، قال: لا خيار إلا على طهر من غير جماع بشهود.

From Zurarah and Muhammad ibn Muslim, from one of them (peace be upon them), he said: There is no choice except in a state of purity without sexual intercourse, with witnesses.

Hadith 28111

عن زرارة، عن أحدهما (عليهما السلام)، قال: إذا اختارت نفسها، فهي تطليقة بائنة، وهو خاطب من الخطاب، وإن اختارت زوجها فلا شيء.

From Zurarah, from one of them (peace be upon them both), he said: If she chooses herself, then it is an irrevocable divorce, and he is a suitor among suitors. But if she chooses her husband, then there is nothing.

Hadith 28112

عن يزيد الكناسي، عن أبي جعفر (عليه السلام)، قال: لا ترث المخيرة من زوجها شيئا في عدّتها ؛ لان العصمة قد انقطعت فيما بينها وبين زوجها من ساعتها، فلا رجعة له عليها، ولا ميراث بينهما.

From Yazid al-Kunasi, from Abu Ja'far (peace be upon him), he said: The woman given the choice of divorce does not inherit anything from her husband during her waiting period, because the marriage bond has been severed between her and her husband from that moment, so he has no right to take her back, and there is no inheritance between them.

Hadith 28113

عن علي بن رئاب، عن حمران، قال: سمعت أبا جعفر (عليه السلام) يقول: المخيرة تبين من ساعتها من غير طلاق، ولا ميراث بينهما ؛ لانّ العصمة قد بانت منها ساعة كان ذلك منها ومن الزوج.

From Ali ibn Ri'ab, from Hamran, he said: I heard Abu Ja'far (peace be upon him) saying: The woman given the choice of divorce is separated from that moment without divorce, and there is no inheritance between them, because the marriage bond was severed from her the moment that occurred from her and from the husband.

Hadith 28114

عن زرارة، عن أبي جعفر (عليه السلام)، قال: قلت له: رجل خير امرأته، فقال: إنما الخيار لها ما داما في مجلسهما، فاذا تفرقا فلا خيار لها،

From Zurarah, from Abu Ja'far (peace be upon him), who said: I said to him: A man gives his wife the choice. He said: The choice is only for her as long as they remain in their sitting, but if they separate, there is no choice for her.

فقلت: ـ أصلحك الله ـ فان طلقت نفسها ثلاثا قبل أن يتفرقا من مجلسهما، قال: لا يكون أكثر من واحدة، وهو أحق برجعتها قبل أن تنقضي عدتها، قد خير رسول الله (صلى الله عليه وآله) نساءه، فاخترنه، فكان طلاقا،

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I said: May Allah reform you, if she divorces herself three times before they separate from their sitting? He said: It cannot be more than one, and he has more right to take her back before her waiting period expires. The Messenger of Allah (may Allah bless him and his family) gave his wives the choice, and they chose him, so it was a divorce.

قال: قلت له: لو اخترن أنفسهن؟ قال: فقال لي: ما ظنك برسول الله (صلى الله عليه وآله) لو اخترن أنفسهن أكان يمسكهن؟ !.

He said: I said to him: What if they had chosen themselves? He said to me: What do you think of the Messenger of Allah (may Allah bless him and his family) - if they had chosen themselves, would he have kept them?

أقول: قد عرفت أن الشيخ حمل هذه الاحاديث على التقية، ويمكن حملها على الاختصاص بالنبي والائمة (عليهم السلام)، بأن يكونوا ذكروا حكمهم في ذلك، أو على أن الزوج وكلّ المرأة في طلاق نفسها، كما يفهم من بعض ما مضى، ويأتي، أو على ما لو طلقها الزوج بعد التخيير، أو على استحباب طلاقها لو اختارت نفسها، ويحتمل غير ذلك، والله أعلم.

I (Hurr Amili) say: You have learned that the Shaykh interpreted these narrations as taqiyyah, and it is possible to interpret them as being specific to the Prophet and the Imams (peace be upon them), that they mentioned their ruling in that matter, or that the husband authorized the woman to divorce herself, as can be understood from some of what has passed and what will come, or regarding what would happen if the husband divorced her after giving her the choice, or regarding the recommendation of her divorcing if she chose herself, and other possibilities are conceivable, and Allah knows best.

Hadith 28115

عن محمّد بن مسلم، عن أبي عبدالله (عليه السلام)، أنه قال: ما للنساء والتخيير، إنما ذلك شيء خص الله به نبيه (صلى الله عليه وآله).

From Muhammad ibn Muslim, from Ab 'Abdillh (peace be upon him), who said: What do women have to do with being given choice? That was something Allah specifically granted to His Prophet (may Allah bless him and his family).

Hadith 28116

عن محمّد بن مسلم، عن أبي جعفر (عليه السلام)، قال إذا خيرها، و وجعل أمرها بيدها في غير قبل عدتها من غير أن يشهد شاهدين، فليس بشيء، وإن خيرها، و جعل أمرها بيدها بشهادة شاهدين في قبل عدتها، فهي بالخيار مالم يتفرقا، فان اختارت نفسها فهي واحدة وهو أحق برجعتها، وإن اختارت زوجها فليس بطلاق.

From Muhammad ibn Muslim, from Ab Ja'far (peace be upon him), who said: If he gives her the choice and places her matter in her hands outside the time of her waiting period without having two witnesses present, then it is nothing. But if he gives her the choice and places her matter in her hands with the testimony of two witnesses during her waiting period, then she has the choice as long as they do not separate. If she chooses herself, then it is one (divorce) and he has more right to take her back. If she chooses her husband, then it is not a divorce.

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أقول: هذا ظاهر في أنه وكلها في طلاق نفسها، ويحتمل ما تقدم.

I (Hurr Amili) say: This is apparent that he authorized her to divorce herself, and it bears the possibility of what was mentioned previously.

Hadith 28117

عن الحسن بن زياد، عن أبي عبدالله (عليه السلام)، قال: الطلاق أن يقول الرجل لامرأته: اختاري، فان اختارت نفسها فقد بانت منه، وهو خاطب من الخطاب، وإن اختارت زوجها فليس بشيء، أو يقول: أنت طالق، فأي ذلك فعل فقد حرمت عليه، ولا يكون طلاق ولا خلع ولا مباراة، ولا تخيير إلاّ على طهر من غير جماع بشهادة شاهدين.

From al-Hasan ibn Ziyad, from Abu Abdullah (peace be upon him), who said: Divorce is when a man says to his wife: Choose, and if she chooses herself, then she has separated from him, and he is a suitor among suitors. If she chooses her husband, then it is nothing. Or he says: You are divorced. Whichever of these he does, she becomes forbidden to him. There is no divorce, no khula, no mubarah, and no takhyir (giving choice) except during a period of purity without sexual intercourse, with the testimony of two witnesses.

Hadith 28118

عن الحلبي، عن أبي عبدالله (عليه السلام) في الرجل يخير امرأته، أو أباها، أو أخاها، أو وليها، فقال: كلهم بمنزلة واحدة، إذا رضيت.

From al-Halabi, from Abu Abdullah (peace be upon him) regarding a man who gives his wife the choice, or her father, or her brother, or her guardian. He said: They are all in the same position when she is satisfied.

Hadith 28119

عن الفضيل بن يسار، قال: سألت أبا عبدالله (عليه السلام) عن رجل قال لامرأته: قد جعلت الخيار إليك، فاختارت نفسها قبل أن تقوم؟ قال: يجوز ذلك عليه، فقلت: فلها متعة؟ قال: نعم، قلت: فلها ميراث إن مات الزوج قبل أن تنقضي عدتها؟ قال: نعم وإن ماتت هي ورثها الزوج.

From al-Fudayl ibn Yasar, who said: I asked Abu Abdullah (peace be upon him) about a man who said to his wife: I have given the choice to you, and she chose herself before she stood up. He said: That is valid against him. I said: Does she have mut'ah (compensation)? He said: Yes. I said: Does she have inheritance if the husband dies before her waiting period ends? He said: Yes, and if she dies, the husband inherits from her.

Hadith 28120

وفي (المقنع) قال: روي: ما للناس والتخيير، إنّما ذلك شيء خص الله به نبيه (صلى الله عليه وآله).

In (al-Muqni') he said: It is narrated: What do people have to do with choice (takhyir)? This is something that Allah specifically granted to His Prophet (peace be upon him and his family).

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Hadith 28121

عن علي بن جعفر، عن أخيه موسى (عليه السلام)، قال: سألته عن رجل قال لامرأته: إني أحببت أن تبيني، فلم يقل شيئا حتى افترقا، ما عليه؟ قال: ليس عليه شيء، وهي امرأته.

From Ali ibn Ja'far, from his brother Musa (peace be upon him), he said: I asked him about a man who said to his wife: I would like you to separate yourself, but he did not say anything until they parted. What is upon him? He said: There is nothing upon him, and she remains his wife.

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CHAPTER 42

That Divorce Is In The Man's Hand, Not The Woman's. If It Is Stipulated In The Marriage Contract That Divorce Is In The Woman's Hand, The Condition Is Void.

[Hadith 28122 to 28122]

Hadith 28122

عن ابن بكير، عن بعض أصحابنا، عن أبي عبدالله (عليه السلام) في امرأة نكحها رجل، فأصدقته المرأة، وشرطت عليه أن بيدها الجماع والطلاق، فقال: خالف السنّة، وولّى الحق من ليس أهله، وقضى أن على الرجل الصداق. وأنّ بيده الجماع والطلاق. وتلك السنة.

From Ibn Bukayr, from some of our companions, from Abu Abdullah (peace be upon him) regarding a woman whom a man married, and the woman gave him the dower and stipulated upon him that she would have control over sexual relations and divorce. He said: This contradicts the Sunnah and assigns the right to one who is not entitled to it. He ruled that the dower is upon the man, and that sexual relations and divorce are in his hand. That is the Sunnah.

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CHAPTER 43

Divorce Being In The Hands Of The Slave, Not The Master, When His Wife Is Free Or A Slave Belonging To Someone Other Than His Master. But If She Is A Slave Belonging To His Master, Then Separation Is In The Hands Of The Master.

[Hadith 28123 to 28127]

Hadith 28123

عن أبي الصباح الكناني، عن أبي عبدالله (عليه السلام)، قال: إذا كان العبد وامرأته لرجل واحد، فانّ المولى يأخذها إذا شاء، وإذا شاء ردها.

From Abu al-Sabah al-Kinani, from Abu Abdullah (peace be upon him), who said: When the slave and his wife both belong to one man, then the master may take her whenever he wishes, and whenever he wishes he may return her.

وقال لا يجوز طلاق العبد إذا كان هو وامرأته لرجل واحد، إلا أن يكون العبد لرجل، والمرأة لرجل، وتزوجها باذن مولاه وإذن مولاها، فان طلّق، وهو بهذه المنزلة فان طلاقه جائز.

And he said: The divorce of a slave is not valid when both he and his wife belong to one man, except when the slave belongs to one man and the woman belongs to another man, and he married her with the permission of his master and the permission of her master. If he divorces while in this situation, then his divorce is valid.

Hadith 28124

عن ليث المرادي، قال: سألت أبا عبدالله (عليه السلام) عن العبد، هل يجوز طلاقه؟ فقال: إن كانت أمتك فلا، إن الله عزّ وجلّ يقول: (عبدا مملوكا لا يقدر على شيء)، وإن كانت أمة قوم آخرين، أو حرة جاز طلاقه.

From Layth al-Muradi, who said: I asked Abu Abdullah (peace be upon him) about the slave - is his divorce valid? He said: If she is your slave girl, then no, for Allah the Mighty and Exalted says: a slave owned who has no power over anything [Quran, 16:75]. But if she is a slave girl belonging to other people, or a free woman, then his divorce is valid.

Hadith 28125

عن أبي بصير، قال: سألت أبا عبدالله (عليه السلام) عن الرجل يأذن لعبده، أن يتزوّج الحرّة، أو أمة قوم، الطلاق إلى السيد أو إلى العبد؟ فقال: الطلاق إلى العبد.

From Abu Baseer, he said: I asked Abu Abdullah (peace be upon him) about a man who permits his slave to marry a free woman or a slave woman belonging to other people - does the divorce belong to the master or to the slave? He said: The divorce belongs to the slave.

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Hadith 28126

عن علي بن يقطين، عن العبد الصالح (عليه السلام) ـ في حديث ـ قال: سألته عن رجل زوج غلامه جاريته؟ قال: الطلاق بيد المولى. وسألته عن رجل اشترى جارية لها زوج عبد؟ قال: بيعها طلاقها.

From Ali ibn Yaqteen, from al-Abd al-Salih (peace be upon him) - in a hadith - he said: I asked him about a man who marries his slave boy to his slave girl? He said: The divorce is in the hand of the master. And I asked him about a man who buys a slave girl who has a slave husband? He said: Her sale is her divorce.

Hadith 28127

عن عبدالله بن سنان، عن أبي عبدالله (عليه السلام)، قال: سألته عن رجل يزوج غلامه جارية حرّة؟ فقال: الطلاق بيد الغلام، فان تزوجها بغير اذن مولاه فالطلاق بيد المولى.

From Abdullah ibn Sinan, from Abu Abdullah (peace be upon him), he said: I asked him about a man who marries his slave boy to a free slave girl? He said: The divorce is in the hand of the slave boy. But if he married her without his master's permission, then the divorce is in the hand of the master.

أقول: الطلاق الثاني بالمعنى اللغوي، يعني: له أن لا يجيز العقد، ويفرق بينهما ؛ لما تقدم في محله، وتقدم ما يدل على المقصود في نكاح العبيد والاماء، ويأتي ما يدل عليه. وقد روى العياشي في (تفسيره) عدة أحاديث في هذا المعنى.

I (Hurr Amili) say: The second divorce is in the linguistic sense, meaning: he has the right not to authorize the contract and to separate between them, based on what was previously mentioned in its proper place. What indicates the intended meaning regarding the marriage of slaves and slave women has been mentioned before, and what indicates it will come later. Al-Ayyashi has narrated in his Tafseer several hadiths with this meaning.

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CHAPTER 44

Divorce Is In The Hand Of The Free Husband When His Wife Is A Slave, Not In The Hand Of Her Master

[Hadith 28128 to 28130]

Hadith 28128

عن علي بن يقطين، عن العبد الصالح (عليه السلام) ـ في حديث ـ قال: سألته، عن رجل زوج أمته رجلا حرّاً؟ فقال: الطلاق بيد الحر.

From Ali ibn Yaqtin, from al-Abd al-Salih (peace be upon him) - in a hadith - he said: I asked him about a man who married his slave girl to a free man. He said: The divorce is in the hand of the free man.

Hadith 28129

عن أبي بصير، قال: سألت أبا عبدالله (عليه السلام) عن رجل انكح أمته حرا، أو عبد قوم آخرين؟ فقال: ليس له أن ينزعها منه، فان باعها، فشاء الذي اشتراها أن ينزعها من زوجها فعل.

From Abu Basir, he said: I asked Abu Abdullah (peace be upon him) about a man who married his slave girl to a free man, or to a slave belonging to other people. He said: He does not have the right to take her away from him. But if he sells her, then the one who bought her may choose to take her away from her husband if he wishes, and he may do so.

Hadith 28130

عن محمّد بن مسلم، عن أبي جعفر (عليه السلام)، قال: قلت له: الرجل يزوج أمته من رجل حرّ، ثمّ يريد أن ينزعها منه، ويأخذ منه نصف الصداق،

From Muhammad ibn Muslim, from Abu Ja'far (peace be upon him), he said: I said to him: A man marries his slave woman to a free man, then he wants to take her back from him and take half the dower from him.

فقال: إن كان الذي زوجها منه يبصر ما أنتم عليه، ويدين به فله أن ينزعها منه، ويأخذ منه نصف الصداق ؛ لانه قد تقدم من ذلك على معرفة أن ذلك للمولى، وإن كان الزوج لا يعرف هذا وهو من جمهور الناس، يعامله المولى على ما عامل به مثله، فقد تقدّم على معرفة ذلك منه.

He said: If the one to whom he married her understands what you are upon and follows this religion, then he has the right to take her back from him and take half the dower from him, because he proceeded with knowledge that this belongs to the master. But if the husband does not know this and he is from the general public, the master should deal with him as he would deal with others like him, for he proceeded with knowledge of this from him.

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أقول: هذا محمول على أن للمولى أن يبيع الأمة، وأن بيعها بمنزلة الطلاق ؛ لانّ للمشتري الفسخ، كما تقدم هنا، وفي نكاح الاماء.

I (Hurr Amili) say: This is understood to mean that the master has the right to sell the slave woman, and that her sale is like divorce, because the buyer has the right to annul the marriage, as previously mentioned here and in the marriage of slave women.

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CHAPTER 45

It Is Not Permissible For A Slave To Divorce Except With His Master's Permission

[Hadith 28131 to 28131]

Hadith 28131

عن زرارة، عن أبي جعفر، وأبي عبدالله (عليهما السلام)، قالا: المملوك لا يجوز طلاقه، ولا نكاحه إلاّ باذن سيّده، قلت: فان السيد كان زوجه، بيد من الطلاق؟ قال: بيد السيد (ضرب الله مثلا عبدا مملوكا لا يقدر على شيء)، أفشيء الطلاق؟ !.

From Zurarah, from Abu Ja'far and Abu Abdullah (peace be upon them both), they said: A slave's divorce is not valid, nor his marriage, except with his master's permission. I said: If the master had married him, in whose hand is the divorce? He said: In the master's hand. Allah sets forth a parable of a slave owned by another, having no power over anything [Quran, 16:75] - is divorce not something?

أقول: المسألة الثانية مخصوصة بأمة مولاه لما تقدّم، والله أعلم.

I (Hurr Amili) say: The second issue is specific to his master's female slave based on what preceded, and Allah knows best.

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